RECORD
AND
BRIEFS

No. 15-1406

IN THE

Supreme Court of the United States

THE GOODYEAR TIRE & RUBBER COMPANY,

Petitioner,

v.

LEROY HAEGER, *ET AL.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED MAY 16, 2016
CERTIORARI GRANTED SEPTEMBER 29, 2016

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Amended Panel Opinion, denying rehearing en banc, 813 F.3d 1233 (9th Cir. 2016) 1a

District Court Proposed Order (D. Ariz. Feb. 24, 2012) 51a

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District Court Order, 2013 U.S. Dist. LEXIS 189796 (D. Ariz. Aug. 26, 2013) 173a

Order Staying the Mandate (9th Cir. Mar. 9, 2016) 197a

U.S. DISTRICT COURT
DISTRICT OF ARIZONA
(PHOENIX DIVISION)

Case #: 2:05-cv-02046-ROS

HAEGER *et al.*,

v.

GOODYEAR TIRE & RUBBER COMPANY *et al.*,

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
07/11/2005	1	NOTICE OF REMOVAL from Maricopa County Superior Court, case number CV2005-050959 (Complaint), filed by Suzanne Haeger, Farmers Insurance Company of Arizona, Leroy Haeger, Donna Haeger, Barry Haeger.(JIR,) (Entered: 07/13/2005)
07/11/2005		SUMMONS Returned Executed by Leroy Haeger, Donna Haeger. Kenneth Brinker, statutory agent, served for Gulfstream Coach Inc served on 6/20/2005, answer due 7/11/2005. ***State Court record received 7/11/05, filed in state court on 6/29/05, docketed in U.S. District Court on 7/11/05*** (JIR,) (Entered: 07/13/2005)

DATE	NO.	DOCKET TEXT
08/23/2006	53	TRANSCRIPT of Discovery Dispute and Rule 16 Conference Proceedings held on 8/22/06 before Judge Roslyn O Silver. Court Reporter: David M Lee. (BAS,) (Entered: 08/23/2006)
08/28/2006	56	*Modified by (Doc. 1153) PROTECTIVE ORDER (re handling of confidential documents and confidential information). Signed by Judge Roslyn O Silver on 8/28/2006. (LAD) Modified on 6/28/2016 (EJA). (Entered: 08/28/2006)
12/28/2006	97	STATEMENT of Joint Statement of Discovery Dispute by Plaintiffs Suzanne Haeger, Farmers Insurance Company of Arizona, Leroy Haeger, Donna Haeger, Barry Haeger, Defendants Goodyear Tire & Rubber Company, Spartan Motors Inc, Gulfstream Coach Inc. (Kurtz, David) (Entered: 12/28/2006)
01/29/2007	116	TRANSCRIPT of Conference Proceedings held on 1/3/07 before Judge Roslyn O Silver. Court Reporter: Merilyn A Sanchez. (BAS,) (Entered: 01/29/2007)
04/17/2007	152	STATEMENT of Joint Statement Re: Discovery Dispute by Plaintiffs Suzanne Haeger, Leroy Haeger, Donna Haeger, Barry Haeger. (Kurtz, David) (Entered: 04/17/2007)

DATE	NO.	DOCKET TEXT
05/11/2007	175	AMENDED DOCUMENT by Suzanne Haeger, Leroy Haeger, Donna Haeger, Barry Haeger. *Plaintiffs' Amended Notice of Rule 30(b)(6) Deposition of Goodyear Tire and Rubber Company*. (Kurtz, David) (Entered: 05/11/2007)
05/22/2007	201	TRANSCRIPT of Discovery Dispute and Status Conference Proceedings held on 5/17/07 before Judge Roslyn O Silver. Court Reporter: Elaine Cropper. (BAS,) (Entered: 05/22/2007)
06/01/2007	225	Joint STATEMENT of Discovery Dispute by Plaintiffs Suzanne Haeger, Farmers Insurance Company of Arizona, Leroy Haeger, Donna Haeger, Barry Haeger, Defendant Goodyear Tire & Rubber Company. (Attachments: (1) Exhibit A (2) Exhibit B (3) Exhibit C (4) Exhibit D)(SAT) (Entered: 06/01/2007)
10/15/2007	345	STATEMENT of Joint Statement Regarding Oustanding Discovery Issues per 9/28/07 Status Conference by Plaintiffs Suzanne Haeger, Leroy Haeger, Donna Haeger, Barry Haeger. (O'Connor, Michael) (Entered: 10/15/2007)

DATE	NO.	DOCKET TEXT
03/29/2010	894	NOTICE of Settlement by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Leroy Haeger, Suzanne Haeger (Kurtz, David) (Entered: 03/29/2010)
04/14/2010	926	Minute Entry. Proceedings held before Judge Roslyn O Silver: This is the time set for a Jury Trial on 4/14/2010. The parties inform the Court they have reached a settlement. The Clerk of Court is directed to close the case. ORDERED that all pending motions to unseal documents from the Plaintiffsare withdrawn. Court Adjourned. (Court Reporter Elaine Cropper.) (MAP) (Entered: 04/15/2010)
06/30/2010	936	SEALED MOTION by Plaintiffs (Attachments: # 1 Exhibit 1 - 4)(MAP) (Entered: 06/30/2010)
05/31/2011	938	MOTION for Sanctions *FOR DISCOVERY FRAUD* by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Suzanne Haeger. (Attachments: # 1 Exhibit 1 - 13)(Kurtz, David) (Entered: 05/31/2011)

DATE	NO.	DOCKET TEXT
06/23/2011	945	* MOTION (REQUEST) FOR ORAL ARGUMENT ON PLAINTIFFS' MOTION FOR SANCTIONS FOR DISCOVERY FRAUD [DOC. 938] by Plaintiffs Barry Haeger, Donna Haeger, Donna Haeger, Suzanne Haeger. (Attachments: # 1 Text of Proposed Order)(Kurtz, David) Modified on 6/23/2011 (LAD). * Incorrect event selected. Docket text modified from Request to Motion. (Entered: 06/23/2011)
07/15/2011	948	RESPONSE in Opposition re 938 MOTION for Sanctions *FOR DISCOVERY FRAUD* filed by Goodyear Tire & Rubber Company. (Attachments: # 1 Exhibit Exhibits to Goodyear Tire's Memorandum in Opposition)(Hancock, Graeme) (Entered: 07/15/2011)
07/18/2011	949	* MOTION to Compel Goodyear to Disclose Concealed Test Data by Barry Haeger. (Kurtz, David) Modified on 7/19/2011 (LAD). * Document not in compliance with LRCiv 7.1(c). Attorney noticed. (Entered: 07/18/2011)
07/22/2011	951	RESPONSE in Opposition re 949 MOTION to Compel Goodyear to Disclose Concealed Test Data filed by Goodyear Tire & Rubber Company. (Okun, Jill) (Entered: 07/22/2011)

DATE	NO.	DOCKET TEXT
07/26/2011	952	REPLY to Response to Motion re 949 MOTION to Compel Goodyear to Disclose Concealed Test Data filed by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Suzanne Haeger. (Kurtz, David) (Entered: 07/26/2011)
10/05/2011	954	ORDER - IT IS ORDERED no later than October 7, 2011 Defendant shall produce to Plaintiffs, and file on the docket, the test results at issue. IT IS FURTHER ORDERED the Motion to Compel (Doc. 949) is DENIED AS MOOT. (See document for details). Signed by Chief Judge Roslyn O Silver on 10/4/11.(LAD) (Entered: 10/05/2011)
10/06/2011	955	MOTION to Seal Document by Goodyear Tire & Rubber Company. (Attachments: # 1 Exhibit A - Declaration of James C. Stroble) (Okun, Jill) (Entered: 10/06/2011)
10/07/2011	959	Sealed Document for In Camera Review filed by Goodyear Tire & Rubber Company. (MAP) (Entered: 10/07/2011)

DATE	NO.	DOCKET TEXT
10/17/2011	963	SEALED REPLY to Response to Motion re 938 MOTION filed by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Suzanne Haeger. (Attachments: # 1 Exhibit 1-12)(MAP) (Entered: 10/17/2011)
10/24/2011	964	RESPONSE to Motion re 945 MOTION (REQUEST) for Oral Argument on Plaintiffs' Motion for Sanctions for DIscovery Fraud filed by Goodyear Tire & Rubber Company. (Attachments: # 1 Exhibit 1 - Declaration of James C. Stroble, # 2 Exhibit Exhibit A to Stroble Declaration (Part 1 of 3), # 3 Exhibit Exhibit A to Stroble Declaration (Part 2 of 3), # 4 Exhibit Exhibit A to Stroble Declaration (Part 3 of 3))(Okun, Jill) (Entered: 10/24/2011)
10/26/2011	965	*REPLY to Re[illegible]nse to Motion re 945 MOTIO[illegible]EQUEST) FOR ORAL ARGU[illegible]T ON PLAINTIFFS' MOTION [illegible]OR SANCTIONS FOR DISCOVERY FRAUD [DOC. 938] by Plaintiffs Barry Haeger, Donna Haeger, Donna Haeger, Suzanne Haeger. (Attachments: # 1 Text of Proposed Order)(Kurtz, David) *Incorrect event type selected; entry modified on 10/27/2011. (KMG). (Entered: 10/26/2011)

DATE	NO.	DOCKET TEXT
02/22/2012	969	IT IS ORDERED granting Plaintiffs' Motion for Oral Argument [Doc. 945]. Oral argument on Plaintiffs' Motion for Sanctions for Discovery Fraud [Doc. 938] is set for 2/29/2012 at 2:00 PM in Courtroom 604, 401 West Washington Street, Phoenix, AZ 85003, before Chief Judge Roslyn O. Silver. Ordered by Chief Judge Roslyn O. Silver.(ROS)(This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 02/22/2012)
02/24/2012	970	ORDER - IT IS ORDERED no later than noon on February 28, 2012, Goodyear and its counsel shall file either joint or separate briefs of no more than ten pages each addressing the Court's proposed findings of fact and conclusions of law. Signed by Chief Judge Roslyn O Silver on 2/24/12. (Attachments: # 1 Proposed Order)(LAD) (Entered: 02/24/2012)
03/09/2012	980	RESPONSE re 970 Order, *"Separate Response of Fennemore Craig and Graeme Hancock"* by Movant Fennemore Craig PC, Interested Party Graeme Hancock. (Attachments: # 1 Index, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(Coulter, Lisa) (Entered: 03/09/2012)

DATE	NO.	DOCKET TEXT
03/09/2012	983	RESPONSE re 970 Order, *Response on Behalf of Roetzel & Andress, LPA to Court's February 24, 2012 Proposed Order* by Movant Roetzel & Andress. (Attachments: # 1 Exhibit Exhibit A to Response on Behalf of Roetzel & Andress to Court's February 24, 2012 Proposed Order)(Harrison, Mark) (Entered: 03/09/2012)
03/09/2012	984	RESPONSE re 977 Order on Motion for Extension of Time to File Response/Reply,,, *The Goodyear Tire & Rubber Companys Response to the Courts February 24, 2012 Proposed Order* by Defendant Goodyear Tire & Rubber Company. (Attachments: # 1 Exhibit Index and Exhibits A - G)(McQuaid, Brian) (Entered: 03/09/2012)
03/13/2012	987	ORDER - IT IS ORDERED the hearing on Plaintiffs' Motion for Sanctions for Discovery Fraud set March 13, 2012 is VACATED AND RESET for March 22, 2012 at 10:00 a.m. IT IS FURTHER ORDERED the Motion for Leave to File a Combined Response (Doc. 986) is GRANTED. Plaintiffs shall file their combined response no later than March 13, 2012. IT IS FURTHER ORDERED the Motion to Seal (Doc. 981) is GRANTED. IT IS FURTHER

DATE	NO.	DOCKET TEXT
		ORDERED no later than March 16, 2012 Defendants shall file responses of no more than five pages each. The Clerk shall file under seal the document lodged at Doc. 982. Signed by Chief Judge Roslyn O Silver on 3/13/12. (LAD) (Entered: 03/13/2012)
03/13/2012	988	Sealed Declaration filed by Goodyear Tire & Rubber Company. (LAD) (Entered: 03/13/2012)
03/13/2012	989	NOTICE re The Goodyear Tire & Rubber Company's Notice of Correction by Goodyear Tire & Rubber Company . (McQuaid, Brian) (Entered: 03/13/2012)
03/13/2012	991	SEALED LODGED Proposed (reports and chart) re: 990 MOTION to Seal Document *The Goodyear Tire & Rubber Companys Motion to File Additional Documents Under Seal*. Document to be filed by Clerk if Motion to Seal is granted. Filed by Goodyear Tire & Rubber Company. (McQuaid, Brian) (Entered: 03/13/2012)
03/13/2012	992	RESPONSE re 983 Response, 980 Response, 984 Response, (*Plaintiffs' Combined Response to Goodyear Tire & Rubber Company, Roetzel & Andress and Fennemore Craig's Responses to the Court's Proposed Order*) by Plaintiffs Barry Haeger,

DATE	NO.	DOCKET TEXT
		Donna Haeger, Donna Haeger, Suzanne Haeger. (Attachments: # 1 Exhibit 1 to 13)(Kurtz, David) (Entered: 03/13/2012)
03/14/2012	995	ORDER re 3/16/2012 briefing. Signed by Chief Judge Roslyn O. Silver on 3/14/2012. (ROS) (Entered: 03/14/2012)
03/16/2012	999	REPLY re 992 Response, *Fennemore Craig and Graeme Hancock's Reply in Support of their Separate Response* by Movants Fennemore Craig PC, Graeme Hancock. (Coulter, Lisa) (Entered: 03/16/2012)
03/16/2012	1000	RESPONSE re 992 Response, 995 Order *Response on Behalf of Roetzel & Andress LPA to Court's March 14, 2012 Order* by Movant Roetzel & Andress. (Attachments: # 1 Exhibit Exhibit 1 to Response on Behalf of Roetzel & Andress, LPA to Court's March 14, 2012 Order, # 2 Exhibit Exhibit 2 to Response on Behalf of Roetzel & Andress, LPA to Court's March 14, 2012 Order)(Harrison, Mark) (Entered: 03/16/2012)
03/16/2012	1001	REPLY re 995 Order *The Goodyear Tire & Rubber Companys Reply In Support Of Its Response to the Courts Proposed Order and Response to the Courts March 14, 2012 Order* by Defendant Goodyear

DATE	NO.	DOCKET TEXT
		Tire & Rubber Company. (Attachments: # 1 Exhibit Index and Exhibits A - E)(McQuaid, Brian) (Entered: 03/16/2012)
03/20/2012	1003	REPLY re 1000 Response, 999 Reply, 1001 Reply, by Plaintiffs Barry Haeger, Donna Haeger, Donna Haeger, Suzanne Haeger. (Kurtz, David) (Entered: 03/20/2012)
03/21/2012	1004	ORDER - IT IS ORDERED no later than 5:00 p.m. on March 21, 2012 the parties shall file a joint statement identifying the individuals who will testify at the March 22, 2012 hearing. The statement should identify the planned scope of each individual's testimony. Signed by Chief Judge Roslyn O Silver on 3/21/12. (LAD) (Entered: 03/21/2012)
03/30/2012	1014	NOTICE OF FILING OF OFFICIAL PARTIAL TRANSCRIPT of Motion Hearing - Unsealed Portion. Proceedings held on 3/22/2012, before Judge Roslyn O. Silver. Court Reporter Elaine Cropper. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 4/20/2012. Redacted Transcript

DATE	NO.	DOCKET TEXT
		Deadline set for 4/30/2012. Release of Transcript Restriction set for 6/28/2012. (VAR) (Entered: 03/30/2012)
04/03/2012	1015	MOTION for Discovery *Motion Pursuant to Rule 502(D), Federal Rules of Evidence, For An Order Regarding Goodyears Attorney / Client Privilege and Work Product Protection* by Goodyear Tire & Rubber Company. (Attachments: # 1 Text of Proposed Order)(McQuaid, Brian) (Entered: 04/03/2012)
04/03/2012	1017	ORDER denying 1015 Motion for Discovery and denying 1016 Motion to Expedite. Signed by Chief Judge Roslyn O Silver on 4/3/12.(LSP) (Entered: 04/03/2012)
04/06/2012	1018	*JOINT STATEMENT of Parties' Joint Statement of Discovery Dispute by Defendant Goodyear Tire & Rubber Company, Bary Haeger, Donna Haeger, Suzanne Haeger, Spartan Motors Incorporated. (Attachments: # 1 Exhibit Index and Exhibit A-C)(McQuaid, Brian) * Modified to add additional filers on 4/9/2012 (LAD). (Entered: 04/06/2012)

DATE	NO.	DOCKET TEXT
04/10/2012	1020	ORDER - IT IS ORDERED Goodyear must produce the documents requested by Plaintiffs as set forth above. The Court will determine the privilege issue at a later date. (See document for full details). Signed by Chief Judge Roslyn O Silver on 4/10/12. (LAD) (Entered: 04/10/2012)
04/18/2012	1023	STATEMENT of PARTIES' JOINT STATEMENT OF DISCOVERY DISPUTE by Plaintiffs Barry Haeger, Donna Haeger, Donna Haeger, Suzanne Haeger. (Kurtz, David) (Entered: 04/18/2012)
04/24/2012	1025	ORDER re 1023 Statement: The present dispute is whether the Court meant to require Goodyear conduct specific searches or whether the Court meant to require Goodyear to respond to the actual Request for Production beginning as of the year 2000. Considering the difficulty in the past regarding Goodyear's compliance with discovery requests, Goodyear must respond to the actual Request for Production of Documents. That request, however, must be limited to documents from the year 2000 to the present, and the test data communications must involve the G159 tire. According to Goodyear, this production will take a substantial amount of time and

DATE	NO.	DOCKET TEXT
		effort. The parties should attempt to agree upon a date for the production of all responsive documents. The deposition of Ms. Okey, which must occur in Phoenix, can be scheduled after that date. If absolutely necessary, the parties may request the Court reset the briefing dates. Signed by Chief Judge Roslyn O Silver on 4/23/12. (LAD) (Entered: 04/24/2012)
05/18/2012	1028	ORDER pursuant to 1026 Stipulation: IT IS ORDERED the briefing schedule set forth in Doc. 1009 is revised as follows: The deposition of Ms. Okey is to be completed in Phoenix by June 8, 2012; simultaneous opening briefs are due June 20, 2012; and simultaneous response briefs are due July 3, 2012. Signed by Chief Judge Roslyn O Silver on 5/18/12. (LAD) (Entered: 05/18/2012)
06/15/2012	1029	TEXT ONLY ORDER - The parties' opening and response briefs shall be no more than twenty-two pages each. Plaintiffs may file separate responses or a single response of forty pages. Ordered by Chief Judge Roslyn O. Silver on 6/15/2012. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (CLB) (Entered: 06/15/2012)

DATE	NO.	DOCKET TEXT
06/22/2012	1043	Sealed Opening Brief filed by Fennemore Craig PC, Graeme Hancock. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C-F)(MAP) (Entered: 06/22/2012)
06/22/2012	1044	Sealed Supplemental Brief in Opposition re 938 filed by Goodyear Tire & Rubber Company. (Attachments: # 1 Exhibit A-B, # 2 Exhibit C-L)(MAP) (Entered: 06/22/2012)
06/22/2012	1045	Sealed Post-Hearing Opening Brief filed by Roetzel & Andress. (Attachments: # 1 Exhibit)(MAP) (Entered: 06/22/2012)
06/22/2012	1046	Sealed Supplemental Brief re 938 filed by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Suzanne Haeger. (MAP) (Entered: 06/22/2012)
06/22/2012	1047	Sealed Statement of Facts re 1046 filed by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Suzanne Haeger. (Attachments: # 1 Exhibit 1-25, # 2 Exhibit 26-50)(MAP) (Entered: 06/22/2012)
07/09/2012	1064	Sealed Closing Brief filed by Roetzel & Andress. (Attachments: # 1 Exhibit A)(MAP) (Entered: 07/09/2012)

DATE	NO.	DOCKET TEXT
07/09/2012	1065	Sealed Response Brief filed by Fennemore Craig PC, Graeme Hancock. (Attachments: # 1 Index, # 2 Exhibit A)(MAP) (Entered: 07/09/2012)
07/09/2012	1067	Sealed Closing Brief filed by Goodyear Tire & Rubber Company. (MAP) (Entered: 07/09/2012)
07/09/2012	1068	Sealed Statement of Facts filed by Goodyear Tire & Rubber Company. (Attachments: # 1 Index and Exhibit A-1, # 2 Exhibit A-2, # 3 Exhibit A-3, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D - F)(MAP) (Entered: 07/09/2012)
07/09/2012	1069	SEALED COMBINED RESPONSE BRIEF filed by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Suzanne Haeger. (Attachments: # 1 Exhibit 1 - 8) (MAP) (Entered: 07/09/2012)
07/09/2012	1070	Sealed Errata filed by Barry Haeger, Donna Haeger(wife), Donna Haeger(as the personal representative of the estate of Leroy Haeger), Suzanne Haeger. (Attachments: # 1 Exhibit 31)(MAP) (Entered: 07/09/2012)
08/17/2012	1072	NOTICE of Errata re 1047 Sealed Document by Plaintiffs Barry Haeger, Donna Haeger, Donna Haeger, Leroy Haeger, Suzanne Haeger.

DATE	NO.	DOCKET TEXT
		(Attachments: # 1 Exhibit)(Egbert, John) (Entered: 08/17/2012)
11/08/2012	1073	ORDER granting in part Plaintiffs' 938 Motion for Sanctions. IT IS FURTHER ORDERED denying Defendant Goodyear's 1034 Motion for Hearing. IT IS FURTHER ORDERED no later than 12/14/2012 Plaintiffs shall file their application for attorneys' fees as required by Local Rule. Signed by Chief Judge Roslyn O Silver on 11/8/12.(CLB) (Entered: 11/08/2012)
12/07/2012	1080	*NOTICE OF APPEAL to 9th Circuit, re: 1073 Order by Goodyear Tire & Rubber Company. Filing fee received: $ 455.00, receipt number 0970-7539511. (McQuaid, Brian) *Modified to add document number/link on 12/10/2012* (REW). (Entered: 12/07/2012)
12/13/2012	1082	* MOTION (APPLICATION) for Attorneys' Fees and Costs with Supporting Declarations by Plaintiffs Barry Haeger, Donna Haeger, Suzanne Haeger. (Attachments: # 1 Exhibit Index and EX 1, # 2 Exhibit Exhibit A, # 3 Exhibit Exhibit B, # 4 Exhibit Exhibit C, # 5 Exhibit EX 2, # 6 Exhibit EX 3, 4, 5, 6)(Kurtz, David) * Modified to correct event on 12/14/2012 (LAD). (Entered: 12/13/2012)

DATE	NO.	DOCKET TEXT
01/10/2013	1100	OBJECTION *Joint Exhibit in Support of Parties' Separately Filed Objections to Plaintiffs' Application for Attorneys' Fees and Costs with Supporting Declarations* by Movants Fennemore Craig PC, Graeme Hancock. (Attachments: # 1 Exhibit A 1 of 2, # 2 Exhibit A 2 of 2, # 3 Exhibit B, # 4 Exhibit C)(Coulter, Lisa) (Entered: 01/10/2013)
01/10/2013	1101	* RESPONSE to 1082 MOTION (APPLICATION) for Attorney Fees and Costs, 1100 Objection, by Movant Basil J Musnuff. (Molinar, Jeffrey) * Modified to correct event on 1/11/2013 (LAD). (Entered: 01/10/2013)
01/10/2013	1102	* RESPONSE to Motion re 1100 Objection, Fennemore Craig, P.C.'s and Graeme Hancock's Response and Objections to Plaintiffs' December 13, 2012 Fee Application 1082 by Movant Fennemore Craig PC. (Coulter, Lisa) * Modified to correct event on 1/11/2013 (LAD). (Entered: 01/10/2013)
01/10/2013	1103	RESPONSE to Motion re 1082 MOTION (APPLICATION) for Attorney Fees and Costs (*related to ECF 1100 Objection*) filed by Goodyear Tire & Rubber Company. (Okun, Jill) (Entered: 01/10/2013)

DATE	NO.	DOCKET TEXT
01/29/2013	1112	* REPLY to Response to 1082 MOTION (APPLICATION) for Attorney Fees and Costs by Plaintiffs Barry Haeger, Donna Haeger, Donna Haeger, Suzanne Haeger. (Attachments: # 1 Exhibit 1 and 2, # 2 Exhibit 3 - Part 1, # 3 Exhibit 3 Part 2, # 4 Exhibit 3 Part 3, # 5 Exhibit 3 Part 4, # 6 Exhibit 3 Part 5, # 7 Exhibit 3 Part 6)(Kurtz, David) * Modified to correct event on 1/30/2013 (LAD). (Entered: 01/29/2013)
06/26/2013	1121	ORDER - IT IS ORDERED the Motion for Attorney Fees and Costs (Doc. 1082) is GRANTED IN PART as set forth above. IT IS FURTHER ORDERED no later than July 19, 2013 the interested parties shall meet and confer regarding the appropriate amount of attorneys' fees and costs. If they are able to reach agreement, no later than July 22, 2013 the parties shall file a joint statement identifying the appropriate amount of attorneys' fees and costs incurred after September 2006 as well as the attorneys' fees and costs incurred as a direct result of the sanctionable conduct. IT IS FURTHER ORDERED if the parties cannot agree on the appropriate amount of attorneys' fees and costs, no later than July 26,

DATE	NO.	DOCKET TEXT
		2013 they shall file a joint statement of no more than three pages per party with each party setting forth: whether appointment of a special master is warranted and how the costs of the special master should be allocated. The parties should also jointly identify three individuals qualified to serve. IT IS FURTHER ORDERED the Motion for Clarification (Doc. 1089) is GRANTED. IT IS FURTHER ORDERED the Motion for Clarification (Doc. 1114) is DENIED WITHOUT PREJUDICE. Plaintiffs should renew their request, if appropriate, within ten days of the mandate being issued. (See document for full details). Signed by Chief Judge Roslyn O Silver on 6/26/13. (LAD) (Entered: 06/26/2013)
07/26/2013	1122	STATEMENT of JOINT RESPONSE RE WHETHER A SPECIAL MASTER SHOULD BE APPOINTED; COST ALLOCATION; AND POTENTIAL SPECIAL MASTERS re 1121 Order on Motion for Attorney Fees,,,,,,, Order on Motion for Miscellaneous Relief,,,,,,,,,,, by Plaintiffs Barry Haeger, Donna Haeger, Donna Haeger, Suzanne Haeger. (Kurtz, David) (Entered: 07/26/2013)

DATE	NO.	DOCKET TEXT
08/26/2013	1125	ORDER - IT IS ORDERED the Clerk of Court is directed to enter judgment in favor Plaintiffs and against Graeme Hancock in the amount of $548,240.23 and against Basil J. Musnuff and the Goodyear Tire and Rubber Co. in the amount of $2,192,960.93. (See document for further details). Signed by Chief Judge Roslyn O Silver on 8/26/13. (LAD) (Entered: 08/26/2013)
08/26/2013	1126	JUDGMENT ON ATTORNEYS' FEES. IT IS ORDERED AND ADJUDGED Pursuant to the Order filed August 26, 2013, judgment is entered in favor of Plaintiffs and against Graeme Hancock in the amount of $548,240.23 and against Basil J. Musnuff and the Goodyear Tire and Rubber Company in the amount of $2,192,960.93. (LAD) (Entered: 08/26/2013)
09/06/2013	1127	NOTICE OF APPEAL to 9th Circuit Court of Appeals re: 1020 Order, 954 Order on Motion to Compel, 1126 Judgment on Attorney Fees, 1025 Order, 1073 Order on Motion for Sanctions, Order on Motion for Hearing on Motion, 1125 Order, by Goodyear Tire & Rubber Company. Filing fee received: $ 455.00, receipt number 0970-9587452. (Okun, Jill) (Entered: 09/06/2013)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket #: 12-17718

LEROY HAEGER, *et al.*,

v.

THE GOODYEAR TIRE & RUBBER CO, *et al.*,

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
12/11/2012	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 12/18/2012. Transcript ordered by 01/07/2013. Transcript due 02/05/2013. Appellant The Goodyear Tire & Rubber Company opening brief due 03/18/2013. Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger answering brief due 04/16/2013. Appellant's optional reply brief is due 14 days after service of the answering brief. [8433837] (RT) [Entered: 12/11/2012 12:42 PM]

DATE	NO.	DOCKET TEXT
02/26/2013	14	Filed order (ALFRED T. GOODWIN, SUSAN P. GRABER and KIM MCLANE WARDLAW) The court has reviewed the responses to the order to show cause. On November 8, 2012, the district court entered an order granting in part a motion for sanctions. In the November 8, 2012 order, the district court, inter alia, granted sanctions to be imposed on appellant Goodyear Tire & Rubber Company and directed appellees to file additional documentation establishing the amount of attorneys' fees and costs. To date, no amount of monetary sanctions has been determined. Consequently, the portion of the November 8, 2012 order regarding the imposition of monetary sanctions is not final or appealable. See 28 U.S.C. § 1291; Jensen Elec. Co. v. Moore, Caldwell, Rowland & Dodd, Inc., 873 F.2d 1327, 1329 (9th Cir. 1989) (order awarding sanctions is not appealable until the amount of sanctions is determined). Accordingly, the scope of this appeal is limited to review only of the portion of the November 8, 2012 order imposing non-monetary sanctions on appellant Goodyear Tire & Rubber Company and requiring appellant to "file a copy of this Order in any G159 case initiated after the date of this

DATE	NO.	DOCKET TEXT
		Order." The court denies appellant's request that this court exercise pendant appellate jurisdiction over the monetary sanctions portion of the November 8, 2012 order. In addition to all other issues that the parties may wish to raise in the merits briefs, the parties shall address whether this court has jurisdiction to review the portion of the November 8, 2012 order imposing non-monetary sanctions on appellant. The opening brief and excerpts of record are due April 1, 2013; the answering brief is due May 1, 2013; and the optional reply brief is due within 14 days after service of the answering brief. [8527506] (WL) [Entered: 02/26/2013 02:25 PM]
05/06/2013	22	Filed (UNDER SEAI) original and 7 copies of Appellant The Goodyear Tire & Rubber Company (Informal: No) opening brief of 59 pages. Four copies Excerpts of record in 7 volumes. Volumes 6 & 7 UNDER SEAL. Served on 05/01/2013. [8617155] (WWP) [Entered: 05/06/2013 11:59 AM]
07/02/2013	39	Filed (UNDER SEAL) original and 7 copies of Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger answering brief of 62 pages. Supplemental Excerpts of

DATE	NO.	DOCKET TEXT
		record in 4 volumes total. Volume 1 and 2 (dkt entry #33). Volumes 3 and 4 filed Under Seal. Served on 07/01/2013. [8700935] (WWP) [Entered: 07/12/2013 08:55 AM]
08/15/2013	41	Filed (UNDER SEAL) original and 7 copies of Appellant The Goodyear Tire & Rubber Company (Informal: No) reply brief of 29 pages. Served on 08/14/2013. [8752121] (WWP) [Entered: 08/22/2013 08:21 AM]
09/09/2013	42	Filed (ECF) Appellant The Goodyear Tire & Rubber Company and Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger Correspondence: Joint Notice of Entry of Final Judgment. Date of service: 09/09/2013 [8774321] (Egbert, John) [Entered: 09/09/2013 01:35 PM]
11/19/2013	49	Filed clerk order (Deputy Clerk: GS): The opposed motions to consolidate Nos. 12-17718, 13-16801, 13-16861, and 13-16862 are granted. Briefing is complete in No. 12-17718. The following briefing schedule shall govern the remaining consolidated cases. The opening briefs are due December 16, 2013. The answering brief is due January 15, 2014. The optional reply briefs are due within 14 days after service of the answering brief. The parties are

DATE	NO.	DOCKET TEXT
		reminded of the court's preference for a joint brief. See 9th Cir. R. 28-4 (In a consolidated case involving multiple separately represented appellants or appellees, all parties on a side are encouraged to join in a single brief to the greatest extent practicable). The provisions of the Streamlined Requests for Extensions of Time shall not apply to these consolidated cases. [8868910] [12-17718, 13-16801, 13-16861, 13-16862] (AF) [Entered: 11/19/2013 02:36 PM]
12/17/2013	53	Filed clerk order: The opening brief [50] submitted by The Goodyear Tire & Rubber Company is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the excerpts of record [51] submitted by The Goodyear Tire & Rubber Company. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover.

DATE	NO.	DOCKET TEXT
		The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [8903972] [12-17718, 13-16801, 13-16861, 13-16862] (WWP) [Entered: 12/17/2013 07:57 AM]
03/26/2014	75	Filed (UNDER SEAL) original and 7 copies of Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger answering brief of 122 pages. Supplemental Excerpts of record in 1 volume. Volume VI. Served on 02/24/2014. [9034650] [12-17718, 13-16801, 13-16861, 13-16862] (WWP) [Entered: 03/27/2014 03:30 PM]
04/02/2014	76	Filed Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger paper copies of excerpts of record [67] in 1 volume. Volume 5. [9041590] [13-16801, 12-17718, 13-16861, 13-16862] (WWP) [Entered: 04/02/2014 01:47 PM]
04/02/2014	77	Filed (UNDER SEAL) Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger paper copies of excerpts of record in 1 volume. Volume 6. [9041597] [13-16801, 12-17718, 13-16861, 13-16862] (WWP) [Entered: 04/02/2014 01:50 PM]

DATE	NO.	DOCKET TEXT
04/16/2014	79	Filed clerk order: The reply brief [78] submitted by The Goodyear Tire & Rubber Company is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [9060575] [12-17718, 13-16801, 13-16861, 13-16862] (WWP) [Entered: 04/16/2014 01:21 PM]
12/29/2014	101	Notice of Oral Argument on Tuesday, March 10, 2015 - 09:00 A.M. - Courtroom 3 - James R Browning US Cthse, 95 7th St, San Francisco, CA. View the Oral Argument Calendar for your case here. When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the form, and file it via Appellate ECF or return the completed form to: SAN FRANCISCO Office.

DATE	NO.	DOCKET TEXT
		[9364113] [12-17718, 13-16801, 13-16861, 13-16862] (AW) [Entered: 12/29/2014 02:37 PM]
02/25/2015	109	Filed (ECF) Appellant The Goodyear Tire & Rubber Company in 12-17718, 13-16801 citation of supplemental authorities. Date of service: 02/25/2014. [9434595] [12-17718, 13-16801, 13-16861, 13-16862] (Bergeron, Pierre) [Entered: 02/25/2015 01:31 PM]
03/03/2015	112	Filed (ECF) Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger in 12-17718, 13-16801, 13-16861, 13-16862 citation of supplemental authorities. Date of service: 03/03/2015. [9443319] [12-17718, 13-16801, 13-16861, 13-16862] (Egbert, John) [Entered: 03/03/2015 03:02 PM]
03/10/2015	113	ARGUED AND SUBMITTED TO J. CLIFFORD WALLACE, MILAN D. SMITH, JR. and PAUL J. WATFORD. [9452001] [12-17718, 13-16801, 13-16861, 13-16862] (TG) [Entered: 03/10/2015 02:12 PM]
07/20/2015	114	FILED OPINION (J. CLIFFORD WALLACE, MILAN D. SMITH, JR. and PAUL J. WATFORD) AFFIRMED. The Sanctionees shall bear all costs in this appeal. Judge: MDS Authoring, Judge: PJW

DATE	NO.	DOCKET TEXT
		Dissenting. FILED AND ENTERED JUDGMENT. [9615023] [12-17718, 13-16801, 13-16861, 13-16862] (MM) [Entered: 07/20/2015 09:59 AM]
08/14/2015	120	Filed (ECF) Appellant GT in 12-17718, 13-16801, - GT in 13-16861, 13-16862 petition for rehearing en banc (from 07/20/2015 opinion). Date of service: 08/14/2015. [9647346] [12-17718, 13-16801, 13-16861, 13-16862] (Bergeron, Pierre) [Entered: 08/14/2015 10:35 AM]
09/17/2015	124	Filed order (J. CLIFFORD WALLACE, MILAN D. SMITH, JR. and PAUL J. WATFORD): Appellees are directed to file a response to the Petitions for Rehearing En Banc of Appellant Goodyear Tire & Rubber Company, Appellant Basil J. Musnuff, and Appellants Graeme Hancock and Fennemore Craig P.C., filed with this court on August 14, 2015, and August 17, 2015. The response shall not exceed 15 pages or 4200 words, and shall be filed within 21 days of the filed date of this order. Parties who are registered for Appellate ECF must file the response electronically without submission of paper copies. Parties who are not registered Appellate ECF filers must file the original response plus 50 paper copies.

DATE	NO.	DOCKET TEXT
		[9687318] [12-17718, 13-16801, 13-16861, 13-16862] (AF) [Entered: 09/17/2015 03:35 PM]
10/07/2015	126	Filed (ECF) Appellees Barry Haeger, Donna Haeger, Leroy Haeger and Suzanne Haeger in 12-17718, 13-16801, 13-16861, 13-16862 response to Petition for Rehearing En Banc (ECF Filing), Petition for Rehearing En Banc (ECF Filing) for rehearing by en banc only (all active, any interested senior judges), Petition for Rehearing En Banc (ECF Filing), Petition for Rehearing En Banc (ECF Filing) for rehearing by en banc only (all active, any interested senior judges), Petition for Rehearing En Banc (ECF Filing), Petition for Rehearing En Banc (ECF Filing) for rehearing by en banc only (all active, any interested senior judges). Date of service: 10/07/2015. [9711043]. [12-17718, 13-16801, 13-16861, 13-16862] (Egbert, John) [Entered: 10/07/2015 05:37 PM]
02/16/2016	127	Filed order and amended opinion (J. CLIFFORD WALLACE, MILAN D. SMITH, JR. and PAUL J. WATFORD). Amending Disposition Opinion AFFIRMED; The opinion and dissent filed on July 20, 2015 and published at 793 F.3d 1122 are hereby amended. The amended

DATE	NO.	DOCKET TEXT
		opinion and dissent are filed concurrently with this order. With these amendments, Judge M. Smith voted to deny the petitions for rehearing en banc, and Judge Wallace so recommends. Judge Watford voted to grant the petitions. The full court was advised of the petitions for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc, and the matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35. The petitions for rehearing en banc are DENIED. Future petitions for panel rehearing and petitions for rehearing en banc will not be entertained.. The Sanctionees shall bear all costs in this appeal. [9865156] [12-17718, 13-16801, 13-16861, 13-16862] (MM) [Entered: 02/16/2016 09:04 AM]
03/09/2016	132	Filed order (J. CLIFFORD WALLACE, MILAN D. SMITH, JR. and PAUL J. WATFORD) Appellants Goodyear Tire & Rubber Company, Basil J. Musnuff, Graeme Hancock, and Fennemore Craig, P.C. each filed a motion to stay the issuance of the mandate pending application for writ of certiorari. Fed. R. App. 41(d)(2). The motions are GRANTED.

DATE	NO.	DOCKET TEXT
		The mandate is stayed for ninety (90) days from the date of this order, pending Appellants' filing of a petition for writ of certiorari in the Supreme Court. If such a petition is filed, the stay shall continue until final disposition by the Supreme Court. Judge Wallace dissents, and votes to deny the motion to stay the issuance of the mandate. [9895101] [12-17718, 13-16801, 13-16861, 13-16862] (WL) [Entered: 03/09/2016 10:05 AM]
05/24/2016	135	Received notice from the Supreme Court: petition for certiorari filed on 05/16/2016. Supreme Court Number 15-1406. [9988485] [12-17718, 13-16801, 13-16861, 13-16862] (RR) [Entered: 05/24/2016 10:07 AM]
09/27/2016	137	Transmitted to the U.S. Supreme Court: CD of sealed 9th Circuit Documents. U.S. Supreme Court Case Number: 15-1398 + 15-1460. Tracking Information: FedEx 943607236299. [10139096] [12-17718, 13-16801, 13-16861, 13-16862] (SOS) [Entered: 09/27/2016 01:41 PM]
10/11/2016	138	Received notice from the Supreme Court. Petition for certiorari GRANTED on 09/29/2016. The petition for a writ of certiorari is granted limited to Question 1

DATE	NO.	DOCKET TEXT
		presented by the petition. The petition for a writ of certiorari in No. 15-1491 is granted limited to Question 1 presented by the petition. The cases are consolidated and a total of one hour is allotted for oral argument. Supreme Court Number 15-1406. [10154224] [12-17718, 13-16801, 13-16861, 13-16862] (RR) [Entered: 10/10/2016 10:42 AM]

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA IN AND FOR THE
COUNTY OF MARICOPA

[Filed June 10, 2005]

No. CV2005-050959

LEROY and DONNA HAEGER, husband and wife;
BARRY and SUZANNE HAEGER, husband and wife;
FARMERS INSURANCE COMPANY OF ARIZONA,
an Arizona corporation,

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER COMPANY,
an Ohio corporation; SPARTAN MOTORS, INC., a
Michigan corporation; and GULFSTREAM COACH, INC.,
an Indiana corporation,

Defendants.

COMPLAINT

(Tort—Non-Motor Vehicle)

GENERAL ALLEGATIONS

1. Leroy and Donna Haeger, husband and wife, are residents of the State of New Mexico.

2. Barry and Suzanne Haeger, husband and wife, are residents of the State of Arizona.

3. Farmers Insurance Company of Arizona is an Arizona corporation with its principal place of business in Maricopa County, Arizona.

4. Defendants are foreign corporations doing business in Maricopa County Arizona, and which have otherwise manufactured and/or sold products which have been placed in the stream of commerce and which have caused damages to Plaintiffs in amounts in excess of the jurisdictional limits of this Court.

5. Defendants Goodyear, Spartan and Gulfstream each contributed in various ways to the manufacture, production, design, sale and warnings associated with a motorhome which was involved in an accident which caused serious injuries to Plaintiffs.

6. Defendant Goodyear Tire & Rubber Company is a manufacturer and/or seller of tires.

7. Defendant Spartan Motors, Inc. is the manufacturer of the chassis of the motorhome.

8. Defendant Gulfstream Coach, Inc. is the manufacturer of the coach and its various component parts which was purchased by Plaintiffs Leroy and Donna Haeger.

9. On June 14, 2003, the motorhome owned by Leroy and Donna Haeger and occupied by all of the Plaintiffs, was involved in a rollover accident as a result of the unforeseeable failure of the front tire on the motorhome.

10. Plaintiffs Leroy and Donna Haeger each suffered, and will continue in the future to suffer, from permanent disfiguring personal injuries, loss of each other's consortium, and emotional distress from witnessing the injuries of each other and their family members.

11. Plaintiff Suzanne Haeger suffered, and will continue in the future to suffer, from permanent and disfiguring personal injuries, the loss of her husband's

consortium, and emotional distress from witnessing the injuries to her husband and other family members.

12. Plaintiff Barry Haeger suffered, and will continue in the future to suffer, from bodily injuries, loss of consortium of his spouse, and emotional distress from witnessing the injuries to his spouse and parents.

13. Plaintiff Farmers Insurance Company of Arizona was the insurer of the motorhome and a jeep, which was being towed by the motorhome on the date of the accident.

14. Plaintiff Farmers Insurance Company of Arizona extended benefits to Plaintiffs Leroy and Donna Haeger pursuant to the terms and conditions of its contract of insurance in the amount of $115,800.17 for damages to the motorhome, the jeep and various contents of the vehicles.

15. Plaintiffs each lost various personal property as a result of the accident in an amount to be proven at the time of trial.

16. The Haeger Plaintiffs have incurred various necessary medical expenses, including, but not limited to, air and ground ambulance, hospitalizations, surgeries, physical therapy, medications and costs associated with the provision of necessary medical care including travel, food and lodging. These damages represent liquidated amounts entitling Plaintiffs to an award of prejudgment interest.

17. Plaintiff Farmers Insurance Company of Arizona's expenses provided pursuant to the terms and conditions of its insurance contract represent liquidated sums entitling Farmers to an award of prejudgment interest.

18. Plaintiffs Leroy and Donna Haeger's dog was ejected from the vehicle and suffered serious injuries from the accident which required extensive medical care and expense, which is the obligation of Defendants, in an amount to be proven at the time of trial.

19. Defendants are each responsible for the damages suffered by Plaintiffs.

COUNT ONE

(Strict Product Liability;
Manufacturing and/or Design)

20. Paragraphs 1 through 19 are incorporated herein by this reference.

21. Defendants are manufacturers and/or sellers of products which were defective and unreasonably dangerous as a result of either manufacturing and/or design which proximately caused the accident and Plaintiffs' injuries.

COUNT TWO

(Strict Product Liability; Failure to Warn)

22. Paragraphs 1 through 21 are incorporated herein by this reference.

23. Defendants prepared, utilized and/or ratified all instructions and/or warnings regarding the motorhome, the tires and their use by Plaintiffs.

24. The instructions and/or warnings were defective as they failed to advise, warn or otherwise inform Plaintiffs adequately of the risks of the use of the motorhome and how to avoid catastrophic tire failure which produced the accident and associated injuries.

25. The defective instructions and/or warnings were a proximate cause of the Plaintiffs' injuries.

COUNT THREE

(Strict Liability; Post-Sale Warnings)

26. Paragraphs 1 through 25 are incorporated herein by this reference.

27. Subsequent to the sale of the motorhome Defendants knew of defects in the manufacture, design and/or warnings associated with the motorhome and its tire.

28. Defendants knew how to locate the purchasers of their products and were obligated to warn Plaintiffs of the defects which were discovered subsequent to the sale of the motorhome.

29. Defendants undertook no effort to advise or warn of these defects subsequent to the sale.

30. This post-sale failure to warn was a proximate cause of the accident rendering Defendants liable for Plaintiffs' injuries.

COUNT FOUR

(Strict Liability; Failure to Recall)

31. Paragraphs 1 through 30 are incorporated herein by this reference.

32. Subsequent to the sale, Defendants became aware of defects associated with the motorhome and the tires which required Defendants to recall the product.

33. Defendants failed to recall the product.

34. Such failure was a proximate cause of the accident and Plaintiffs' injuries.

COUNT FIVE

(Negligent Design and/or Manufacture)

35. Paragraphs 1 through 34 are incorporated herein by this reference.

36. Defendants each had a duty to design and/or manufacture their products to protect users of the products from foreseeable risks of harm.

37. Defendants failed to appropriately design and/or manufacture their products, which was a proximate cause of Plaintiffs' injuries.

COUNT SIX

(Negligence; Failure to Warn)

38. Paragraphs 1 through 37 are incorporated herein by this reference.

39. Defendants each had a duty to provide instruction and warnings in such a fashion to protect Plaintiffs from foreseeable risks of harm.

40. Defendants failed to provide adequate instructions and/or warnings and such failure was a proximate cause of Plaintiffs' damages, rendering Defendants liable.

COUNT SEVEN

(Negligence; Post-Sale Failure to Warn)

41. Paragraphs 1 through 40 are incorporated herein by this reference.

42. Subsequent to the sale of the vehicle, Defendants became aware of risks of harm associated with the use of the vehicle, which required Defendants to provide a post-sale warning to users of the vehicle

of risks which potentially could be avoided by post-sale warnings.

43. Defendants knew how to locate the purchasers of their vehicles and could have provided post-sale instructions and/or warnings to avoid foreseeable risks of harm.

44. Defendants failed to provide such post-sale instructions and/or warnings to Plaintiffs and such failure was a proximate cause of Plaintiffs' damages.

COUNT EIGHT

(Negligence; Failure to Recall)

45. Paragraphs 1 through 44 are incorporated herein by this reference.

46. The tires which were originally sold by Defendant Goodyear with the motorhome are no longer manufactured by Goodyear.

47. The tires are no longer manufactured by Goodyear as a result of problems, including performance problems associated with the employment of the tires in motorhomes and other large vehicles.

48. Defendants each were aware of problems associated with the utilization of the tire in motorhomes, including the motorhome involved in this incident.

49. Defendants each failed to participate in a recall of the motorhome and the tires, which should have been undertaken to avoid foreseeable risks of harm.

50. The failure to recall the motorhome and the tires was a breach of Defendants' duties to Plaintiffs and has proximately caused their injuries.

COUNT NINE

(Exemplary Damages)

51. Paragraphs 1 through 50 are incorporated herein by this reference.

52. Defendants were aware of the risks of harm associated with the utilization of their product.

53. Defendants knowingly, willfully and wantonly failed to undertake any effort to protect Plaintiffs from such risks, knowing full well that Plaintiffs were exposed to serious risk of personal injury.

54. Defendant Goodyear's model tire has been involved in various failures which have caused personal injuries to others.

55. Defendants Gulfstream and Spartan were also aware of the history of this model of Goodyear tire's failure and associated injuries to the users of the product, including users of similar motorhomes.

56. Defendants each failed to undertake any effort whatsoever to protect Plaintiffs from the risk of serious injuries associated with the use of their product and in particular, the risks associated with the utilization of the product employing Goodyear's tires.

57. Defendants' actions were knowing, willful and wanton, and substantially certain to expose Plaintiffs to risks of serious personal injuries.

58. Plaintiffs are entitled to an award of punitive damages to punish Defendants and to deter them from similar future conduct in an amount to be proven at the time of trial.

WHEREFORE, Plaintiffs request judgment be entered in their favor for all damages proximately

caused by the acts and omissions of Defendants, including an award of prejudgment interest, punitive damages and costs incurred herein.

DATED this 13th day of June, 2005.

THE KURTZ LAW FIRM

By: /s/ David L. Kurtz
David L. Kurtz

COZEN O'CONNOR

By: /s/ Blanca Quintero
Blanca Quintero

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

CIVIL MINUTES - JURY TRIAL

CV-05-02046-PHX-ROS DATE: 4/14/10
Year Case No Initials

Title: Donna Haeger, et al.
Plaintiffs

vs.

Goodyear Tire & Rubber Company
Defendant

HON: ROSLYN O. SILVER Judge # 7022

Deputy Clerk: Christine Boucher

Court Reporter: Elaine Cropper

Michael O'Connor and David Kurtz
Attorney(s) for Plaintiff(s)

Graeme Hancock, Basil Musnuff, and Scott Freeman
Attorney(s) for Defendant(s)

PROCEEDINGS: X JURY TRIAL
__ NON-JURY TRIAL
__ VOIR DIRE
__ JURY SWORN

Trial day # 1

8:34 a.m. This is the time set for a Jury Trial. Counsel are present. Jury panel is not present. The parties inform the Court they have reached a settlement. The Clerk of Court is directed to close the case. 8:37 a.m. Court is in recess while the settlement agreement is placed on the record under seal.

8:53 a.m. Court reconvenes. IT IS ORDERED that all pending motions to unseal documents from the Plaintiffs are withdrawn. All documents that have already been sealed will remain sealed. IT IS FURTHER ORDERED that all exhibits are released to the parties. IT IS FURTHER ORDERED that counsel are to submit all copies of the juror questionnaires and all copies of the jury list to the Court, no later than Friday, April 16, 2010. The jury is ordered released. 8:54 a.m. Court is adjourned.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

[Filed: 10/05/11]

No. CV-05-2046-PHX-ROS

LEROY HAEGER, *et al.*,

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER CO., *et al.*,

Defendants.

ORDER

Plaintiffs have filed a Motion for Sanctions and a Motion to Compel. There are serious questions regarding Defendant's conduct in this case and it is well-established that "a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). Pursuant to that power, Defendant will be ordered to produce to Plaintiffs, and file with the Court, the test results at issue.

Accordingly,

IT IS ORDERED no later than October 7, 2011 Defendant shall produce to Plaintiffs, and file on the docket, the test results at issue.

IT IS FURTHER ORDERED the Motion to Compel (Doc. 949) is DENIED AS MOOT.

Dated this 4th day of October, 2011.

/s/ Roslyn O. Silver
Roslyn O. Silver
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

[Filed: 03/14/12]

No. CV-05-02046-PHX-ROS

LEROY HAEGER, *et al.*,

Plaintiffs,

vs.

GOODYEAR TIRE & RUBBER CO., *et al.*,

Defendants.

ORDER

In filing the briefs due on March 16, 2012, Fennemore Craig, P.C. and Graeme Hancock; Roetzel Andress, LPA and Basil Musnuff; and Goodyear Tire & Rubber Co. (collectively, "Defendants") must address the following issues:

1) The plaintiffs in *Schalmo v. Goodyear* requested Goodyear "[p]roduce all documents reflecting studies, analysis or testing . . . associated with determining the appropriate speed rating, Load Range and/or vehicle application of G159 tires." (Doc. 992-1 at 4). In response to this request, Goodyear produced the "Laboratory Durability Testing – Heat Rise" test data. (Doc. 992-1 at 5). Defendants must address why the Heat Rise tests *were* produced in response to the *Schalmo* request quoted above but *were not* produced in response to Plaintiffs' Third Request for Production

of Documents.[1] (Doc. 938-1 at 17). Defendants should also explain, in detail, why other tests produced in response to the *Schalmo* request quoted above were not produced in this case.

2) On March 13, 2012, Goodyear filed a "Notice of Correction." (Doc. 989). According to that notice, the statement that Goodyear produced "crown durability, bead durability and DOT endurance test reports" was inaccurate. Defendants should state in *unequivocal* terms (*i.e.*, "yes" or "no") whether the "crown durability, bead durability and DOT endurance test reports" should have been produced in this case. If the answer is "yes," Defendants must explain the failure to do so. If the answer is "no," Defendants must explain why the tests were not responsive.

3) Defendants should state in *unequivocal* terms whether the results of the Heat Rise tests conflict with *any* representation made during this litigation. For example, Defendants should indicate whether any of Goodyear's representations in connection with the summary judgment motions are contradicted by the Heat Rise tests. Defendants should also indicate whether the Court's proposed order is accurate when it states that disclosure of the Heat Rise tests would have "severely compromised" Goodyear's defense of this case.

4) Defendants must state in *unequivocal* terms who is responsible for not producing the Heat Rise tests. In

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[1] In her declaration, Deborah A. Okey states the Heat Rise tests were produced in Schalmo because "the plaintiffs specifically sought discovery relating to, among other things, heat testing." (Doc. 984-1 at 5). Goodyear should address whether this statement is accurate considering the actual discovery request in Schalmo.

other words, Defendants should assume the Court believes the Heat Rise tests should have been produced. Under that assumption, which of the three entities (Goodyear; Fennemore Craig, P.C. and Graeme Hancock; or Roetzel & Andress, LPA and Basil Musnuff) should be held responsible for the failure to do so.

5) Defendants must state whether the Heat Rise tests were produced in the *Bogaert v. Goodyear* case. If they were not produced, Defendants should explain the failure to do so. Accordingly,

IT IS ORDERED the briefs due on March 16, 2012 shall address the issues outlined above. Based on the additional information being required, Defendants briefs may be up to fifteen pages in length.

IT IS FURTHER ORDERED Basil Musnuff shall attend the March 22, 2012 hearing in person.

DATED this 14th day of March, 2012.

/s/ Roslyn O. Silver
Roslyn O. Silver
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

[Filed 03/21/12]

No. CV-05-2046-PHX-ROS

LEROY HAEGER, *et al.*,

Plaintiffs,

vs.

GOODYEAR TIRE & RUBBER CO., *et al.*,

Defendants.

ORDER

The parties have completed briefing the motion for sanctions. Based on their submissions, it is clear that Goodyear and its counsel remain committed to advocating seemingly untenable positions. For example, Goodyear and its counsel seek to justify withholding heat testing of the tire at issue in this case despite the fact that Plaintiffs, the Court, and defense counsel knew Plaintiffs' defect theory involved heat issues. Rather than appearing contrite, Goodyear and its counsel have sought to justify their actions through hypertechnical parsing of their actions during discovery. This is directly contrary to long-established authority. *See* Fed. R. Civ. P.34 advisory committee's notes, 1993 Amendments, Subdivision (a) ("[Discovery requests] should not be read or interpreted in an artificially restrictive or hypertehncial manner to avoid disclosure of information fairly covered by the discovery request . . . ."). Attempting to justify the

unjustifiable strengthens the Court's belief that sanctions are appropriate. *Cf. Valdez-Castillo v. Busch Entm't Corp.*, 2008 WL 4999175, at *5 (S.D. Fla.) (declining to impose sanctions when the attorney "appeared genuinely contrite" for his errors).

The approach taken by Goodyear and its counsel risks grave harm to their reputations. Shakespeare famously identified the folly of such actions:

> Good name in man and woman, dear my lord,
> Is the immediate jewel of their souls.
> Who steals my purse steals trash; 'tis something, nothing;
> 'Twas mine, 'tis his, and has been slave to thousands.
> But he that filches from me my good name
> Robs me of that which not enriches him
> And makes me poor indeed.

Othello, act 3, sc. 3. This is especially applicable to lawyers because, as Justice Stevens observed, "most lawyers are wise enough to know that their most precious asset is their professional reputation." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 413 (1990) (Stevens, J., concurring in part and dissenting in part).

If they plan on continuing to defend their actions on the merits, Goodyear and its counsel should be prepared to present substantially more compelling justifications than those they have proffered to date. If such justifications are not available, Goodyear and its counsel should give serious consideration to settling this matter with Plaintiffs.

Finally, the parties will be directed to file a list of those individuals whom they wish to call to testify at the hearing on March 22, 2012. These individuals will

be subject to direct examination as well as cross-examination by opposing counsel and the Court.

Accordingly,

IT IS ORDERED no later than 5:00 p.m. on March 21, 2012 the parties shall file a joint statement identifying the individuals who will testify at the March 22, 2012 hearing. The statement should identify the planned scope of each individual's testimony.

DATED this 21st day of March, 2012.

/s/ Roslyn O. Silver
Roslyn O. Silver
Chief United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

[Filed 12/13/12]

[Title omitted in printing.]

PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES AND COSTS WITH SUPPORTING DECLARATIONS

On November 8, 2012, this Court entered its Order imposing sanctions on Goodyear and its counsel and requiring Plaintiffs to file documentation establishing the amount of attorneys' fees and costs incurred after November 1, 2006, the date Goodyear filed its Supplemental Responses to Plaintiffs' First Request for Production (Dkt. #1073, p. 64).

In compliance with this Court's Order, Plaintiffs have provided herewith the time and cost information for The Kurtz Law Firm, Jennings, Strouss & Salmon, P.L.C. ("JSS") and Abernethy & Green. The time records and cost expenditures are fully supported by the attached Declarations of Plaintiffs' counsel, each of which has been prepared in accord with the Court's Order. See Declaration of David L. Kurtz, attached hereto as Exhibit 1; Declaration of Michael J. O'Connor, attached hereto as Exhibit 2; Declaration of James Abernethy, attached hereto as Exhibit 3. They are further supported by the three attached Declarations of Disinterested Counsel. See Exhibits 4-6.

The Court's Order instructed Plaintiffs to file the documentation in support of attorneys' fees and costs "as required by Local Rule" (Dkt. #1073, p. 66). The

Local Rule relating to attorneys' fees and related non-taxable expenses, provides:

> This Local Rule does not apply to claims for attorneys' fees and related non-taxable expenses which may have been recoverable as an element of damages or to claims for attorneys' fees and related expenses for violations of the Federal Rules of Civil Procedure or under 28 U.S.C. § 1927.

LR Civ. 54.2.

Even though Rule 54.2, by its own terms, does not apply in this context, the declarants have provided submittals generally consistent with the spirit and intent of the Rule to assist the court in the exercise of its discretion. Each of the Haegers' attorneys has been mindful of the Court's intention to enter a fee award pursuant to the lodestar method (see Dkt. # 1073, p. 51, n. 23), and have endeavored to provide the Court with detailed time records, related cost expenditures and detailed Declarations.

The lodestar approach for an attorney fee award contemplates establishment of a fee that "the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case." *Perdue v. Kenney A., ex rel. Winn*, 130 S. Ct. 1662, 1672 (2010). The reasonable hourly rate is determined by consideration of the prevailing market rate in the community for similar services of lawyers of comparable skill, expertise and reputation. *Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005). The reasonable fee calculation also considers the complexity of the issues, the quality of the representation, and the results obtained. *Morales v. City of San Rafael*, 96 F.3d 359, 364 n.9 (9th Cir. 1996)

The use of current market rates as a way to compensate for delay has been approved by the U.S. Supreme Court. *Missouri v. Jenkins*, 491 U.S. 274, 283 (1989) ("In setting fees for prevailing counsel, the courts have regularly recognized the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value."); *Perdue v. Kenny A.*, 130 S. Ct. 1662 at 1675 (same).

The detailed time records and supporting Declarations set forth total fee and cost expenditures as follows:

The Kurtz Law Firm attorneys' fees:	$2,044,311.50
The Kurtz Law Firm costs:	$ 259,013.29
JSS attorneys' fees:	$ 502,946.00
JSS costs:	$ 32,466.60
Abernethy & Green attorneys' fees:	$ 45,320.00
Total attorneys fees:	**$2,592,577.50**
Total costs: $	**291,479.89**

Having complied with the directives specified in the Court's November 8, 2012 Order (Dkt. #1073), Plaintiffs hereby request that the Court enter its order awarding attorneys' fees and costs in the **total amount of $2,884,057.39** as the appropriate sanction for the egregious misconduct more fully specified in that 66-page order.

RESPECTFULLY SUBMITTED this 13th day of December, 2012.

THE KURTZ LAW FIRM

By: /s/ David L. Kurtz
David L. Kurtz

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

[Filed 01/10/13]

[Title omitted in printing.]

DEFENDANT THE GOODYEAR TIRE & RUBBER COMPANY'S RESPONSE AND OBJECTIONS TO PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES AND COSTS

PRELIMINARY STATEMENT

Defendant The Goodyear Tire & Rubber Company ("Goodyear") respectfully submits its response and objections to Plaintiffs' Application for Attorneys' Fees and Costs ("Fee Request") (ECF 1082).[1]

The Court's November 8, 2012 Order directed plaintiffs to file their application for attorneys' fees as required by Local Rule. (ECF 1073 at 60) As such, Goodyear was expecting plaintiffs to contact its counsel in a good faith effort to resolve potentially disputed issues relating to fees and costs as LRCiv 54.2(d)(1) requires. Rather than follow the dictates of the Local Rule, plaintiffs filed their fee application seeking almost $3 million for a period of over six years without

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[1] In filing this Response, Goodyear does not waive its right to appeal the Court's November 8, 2012 order granting sanctions in favor of plaintiffs ("Order") (ECF 1073). Nor should this opposition to plaintiffs' fee petition be construed as waiving the impropriety of this Court's Order requiring payment of all fees from November 2006 onward as opposed to incremental fees caused by Goodyear's alleged discovery misconduct, as required by Ninth Circuit law. *See Miller v. City of L.A.*, 661 F.3d 1024, 1029 (9th Cir. 2011).

any consultation with Goodyear's counsel. Accordingly, Goodyear is constrained to delineate each of the deficiencies contained in plaintiffs' billing entries and seek the appropriate relief.

Plaintiffs' Application for Attorneys' Fees and Costs seeks almost $3 million which is unreasonable on its face. Such an amount exceeds any sanction ever awarded by the District of Arizona for allegedly similar conduct. A nearly $3 million sanctions award undermines established precedent that sanctions should be compensatory and not vindictive. Courts routinely reduce a large fee request by a significant percentage off of the top when faced with such a high number. *See Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1158 (9th Cir. 2002) ("In appropriate cases, the district court may adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975)."). Such a reduction is warranted here.

Further, as noted there are multiple deficiencies in plaintiffs' fee application which warrant a denial or significant reduction in the amount of fees and costs. First, a substantial number of the time entries submitted by plaintiffs, especially in the early stages of the case, fall well outside the legitimate scope of the Court's Order or Goodyear's allegedly sanctionable conduct. Second, most of plaintiffs' time entries are vague and ambiguous. Thus, they not only lack the information required pursuant to LRCiv 54.2, but they also make it difficult if not impossible for Goodyear or the Court to determine if the time entry at issue is recoverable. Third, plaintiffs' Fee Request is replete with examples of duplicative tasks being performed by multiple time keepers, either within the same firm, or among the three law firms that represent plaintiffs.

Such entries, if compensable, should only be reimbursed once. Fourth, plaintiffs' time entries are often excessive for the nature of the tasks described. Such entries should be reduced to an amount proportionate to the task performed. Fifth, many of plaintiffs' time entries are for clerical, administrative or secretarial tasks performed by legal assistants or attorneys, which are not recoverable at all. Such time should be written off entirely. Sixth, virtually all of plaintiffs' time entries are provided in block billing format, making it impossible to discern which time is properly recoverable and which time is not. Finally, plaintiffs have acknowledged submitting reconstructed time entries from August 11, 2009 through December 31, 2010, which entries are not recoverable. In addition to plaintiffs' overreaching with respect to time entries, most of the "costs" submitted by plaintiffs are not recoverable under LRCiv 54.2. Plaintiffs' failure to comply with the express requirements of LRCiv 54.2, allows for complete denial of their petition or at least a substantial reduction.

A. Plaintiffs' Requested Fees And Expenses Are Unreasonable And Their Fee Request Does Not Comply With LRCiv 54.2

It is firmly established in the Ninth Circuit that "the amount of monetary sanctions [pursuant to a court's inherent authority] must be 'reasonable.'" *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961 (9th Cir. 2006); *see also Rosensweig v. Bally Total Fitness Corp.*, 14 Fed. Appx. 765, 766 (9th Cir. Cal. 2001) ("Sanctions must be reasonable in amount, and when they are based upon attorneys' fees, those fees must be reasonable under the circumstances."). *Iglesias v. City of Goodyear*, 2012 U.S. Dist. LEXIS 120294, *9 (D. Ariz. Aug. 23, 2012) ("Sanctions must be reasonable in amount,

particularly so where, as here, the amount of the sanction is based upon the attorney's fees claimed by the other party."). In calculating sanctions the Court "must demonstrate some connection between the amount of monetary sanctions it imposes and the sanctionable conduct by the violating party." *Carroll v. Jaques*, 926 F. Supp. 1282, 1291 (E.D. Tex. 1996). The Court should impose the least severe sanction adequate to achieve the purpose of the rule under which it was imposed. "District courts must demonstrate that sanctions are not vindictive or overly harsh reactions to objectionable conduct, and that the amount and type of sanction was necessary to carry out the purpose of the sanctioning provision." *Id.*

In determining a reasonable attorney's fee, some courts apply the "lodestar" method. In *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), the Supreme Court outlined the proper method for determining reasonable attorneys' fees using the lodestar method and held that the court may decrease the amount of hours in the calculation where the prevailing party's counsel inadequately documents their hours. *Id.* at 433. The Court ". . . should exclude from the lodestar amount hours that are not reasonably expended because they are 'excessive, redundant, or otherwise unnecessary.'" *Van Gerwen v. Guarantee Mutual Life Company*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley*, 461 U.S. at 434).

LRCiv 54.2, entitled "Attorneys' Fees and related Non-Taxable Expenses" is the Local Rule for the District of Arizona that governs attorney fee requests. The rule provides a series of mandatory procedural and substantive requirements in connection with filing an application for attorneys' fees. Plaintiffs have failed to comply with many of these requirements. *See*

Schrum v. Chem. Lime Co. of Ariz., 2008 U.S. Dist. LEXIS 43184, *10-11 (D. Ariz. May 30, 2008) (the requirements of LRCiv 54.2 are "mandatory").

As mentioned, plaintiffs have not consulted with Goodyear as required by LRCiv 54.2(d)(1) which states that a Court may not consider a motion for an award of attorneys' fees absent a statement of personal consultation:

> No motion for an award of attorneys fees will be considered unless a separate statement of the moving counsel is attached to the supporting memorandum certifying that, after personal consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve all disputed issues relating to attorneys' fees or that the moving counsel has made a good faith effort, but has been unable, to arrange such conference.

Plaintiffs have not made any effort to set up such a consultation with Goodyear prior to filing their Fee Request nor offered a justifiable excuse for their failure to do so. Thus, the Court may choose not to consider plaintiffs' Fee Request. *Schrum* at *7. Indeed, the *Schrum* court reiterated the admonition from *Rudebusch v. Arizona*, 2007 U.S. Dist. LEXIS 70690 (D. Ariz. Sept. 20, 2007) that "'counsel are forewarned[,]' however, 'that future fee motions must include this Statement [in the first instance], or the court will not consider them.'" *Schrum* at *8.

Further, plaintiffs have failed to provide the fee agreement required under LRCiv 54.2(d)(2), which states that "[a] complete copy of any written fee agreement, or a full recitation of any oral fee agree-

ment must be attached to the supporting memorandum." Plaintiffs' counsels' declarations neither describe nor attach the fee arrangements between plaintiffs and their counsel. In addition to ensuring that plaintiffs' recovery is proper, plaintiffs' fee agreement is needed to avoid duplicative payment of expenses. Goodyear and the Court are entitled to this information prior to the determination of any award. *Id.*

B. Plaintiffs' Time Records Do Not Comply With The Local Rules or Ninth Circuit Law and Should Be Substantially Reduced

In addition to failing to comply with the basic prerequisites entitling a party to fees, plaintiffs' violations of numerous provisions of LRCiv 54.2 compel that the fees requested by plaintiffs be reduced for each of the following independent reasons. Cumulatively, these defects necessitate a substantial deduction of plaintiffs' requested fees. Goodyear incorporates herein its Joint Exhibit (ECF 1100) which includes at Ex. A an annotated copy of plaintiffs' Fee Request which reflects the unrecoverable nature of the entries. The annotations are accompanied by a key explaining the basis for each objection by capital letter (A-I).

1. Block Billing

Virtually all of plaintiffs' time entries are block billed, which is impermissible under LRCiv 54.2 and Ninth Circuit law. Plaintiffs' improper use of this billing format requires the Court to make an across the board reduction in plaintiffs' Fee Request. *Center for Biological Diversity v. Salazar*, 2012 U.S. Dist. LEXIS 164203 *12-15 (D. Ariz. November 15, 2012) (deducting an additional 10% after applying the 65%

figure, to account for block billing that clearly is impermissible.) "Block billing makes it more difficult to determine how much time was spent on particular activities and thus whether the associated fees are reasonable. A court may reduce the requested hours where counsel has lump[ed] together multiple tasks, making it impossible to evaluate their reasonableness." *Mohajerin v. Pinal County*, 2008 U.S. Dist. LEXIS 121814, *5 (D. Ariz. 2008) (internal citations omitted) (court reduced block billed entries by 30%). Similarly, the Ninth Circuit affirmed a 30% reduction for block billing where 80% of the billing entries were block billed. *Lahiri v. Universal Music & Video Distribution Corp.*, 606 F.3d 1216, 1222-23 (9th Cir. 2010) (recognizing California State Bar Committee Report in Mandatory Fee Arbitration concluding that block billing can increase time billed by 30%.).

The following entries are representative examples of improper block billing:

Date	Time-keeper	Task	Time	Rate	Total
5/5/07	David Kurtz	Email to Voce regarding documents; email to Morrison regarding documents; review subpoena duces tecum; review Salem and Osborne files for supplemental production; review documents for depositions; attend meeting with client	11.5	$500 /HR	$5750

5/16/07	David Kurtz	Review Pullen transcript; multiple emails regarding deposition scheduling, telephone conference with Lewallen, telephone conference with Abernethy; correspondence to parties; prepare for hearing	7.5	$500 /HR	$3750
6/5/07	David Kurtz	Telephone conference with Abernethy; review and revise discovery requests; draft multiple deposition notices; review rebuttal reports; review 19th disclosure statement	6.6	$500 /HR	$3300
8/3/07	David Kurtz	Attend meeting with O'Connor regarding file review; revisions to scheduling order and discovery dispute; draft discovery dispute based on upon final file review; review Salem file regarding additional production; select documents for supplemental disclosure statement; draft supplemental disclosure statement; draft additional discovery; telephone conference with O'Connor regarding new pleading	9.8	$500 /HR	$4900

As made clear by these examples, counsels' practice of utilizing block billing makes it almost impossible to

determine how much of the total time recorded is associated with a properly reimbursable task. This is especially egregious here where so many of the block billed entries include other non-recoverable tasks (i.e. duplicative, secretarial, beyond the scope, vague). While a 30% reduction is often used for the improper practice of block billing, the reduction required here is even greater.

2. Recreated Time Entries for August 11, 2009 Through December 31, 2010

The party seeking to be compensated for time spent has the burden to provide contemporaneous time records. "An attorney's post facto review of the file, and a reflective judgment as to the hours devoted to the project are not sufficient for this purpose." *State of Arizona v. Maricopa County Med. Soc.*, 578 F.Supp. 1262, 1267 (D. Ariz. 1982) (disallowing reconstructed time of 174.1 hours). *See also, American Law Center, PC v. Stanley*, 253 F.3d 438, 443 (9th Cir. 2001). Nonetheless, Mr. Kurtz acknowledges that he has re-constructed his time records for more than seventeen months from August 11, 2009 through December 31, 2010. (ECF 1082-1). Mr. Kurtz's excuse that he was too busy with trial to keep time records and that maintaining time records was not sufficiently important flies in the face of LRCiv 54.2 and case law. ("As the first trial setting approached, I devoted myself almost exclusively to this matter seven days a week. Meeting the tasks at hand was far more important than keeping detailed time records." *Id.* at ¶ 18).

> Plaintiff has the burden of establishing the reasonableness of her fee request, and applicants must submit contemporaneous time records of hours worked and rates

> claimed which sufficiently document the services rendered and prove their reasonableness. *Where documentation is inadequate or represents a recently compiled retrospective estimation of time expended, the district court would do violence to its judicial obligations were it to accept the amounts claimed at their value.*

Stevens v. Astrue, 2011 U.S. Dist. LEXIS 65397, *9-10 (D. Ariz. June 17, 2011) (internal citations omitted and emphasis added). *See also Apple, Inc. v. Samsung Elecs. Co.*, 2012 U.S. Dist. LEXIS 160668, *24 (N.D. Cal. Nov. 7, 2012) ("Although parties seeking attorneys' fees are required only to provide affidavits sufficient to enable the court to consider all the factors necessary to determine a reasonable attorney's fee award, parties are subject to a reduction in the hours awarded when they fail to provide adequate documentation, notably contemporaneous time records.") (internal citations omitted).

Plaintiffs' counsel admits to not maintaining time records for over seventeen months,[2] and seemingly did not do so for an additional period of almost two years. Now years later, plaintiffs "compiled a retrospective estimation of time expended." This is impermissible and such time amounting to likely over double the $146,000 conceded need be wholly deducted or at minimum substantially reduced.

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[2] Interestingly, on Mr. Kurtz's November 13, 2012 time entry he records 2.1 hours to: "Draft time records since January 2011," which is in marked distinction to his Declaration where he attests: "I again kept detailed time records from January 1, 2011 to date." Kurtz Declaration in Support of Fee Application at ¶ 18. Accordingly another substantial reduction encompassing almost two additional years of recreated time is in order.

Plaintiffs' recreated time entries are marked with the letter A on Exhibit A to the Joint Exhibit.

3. Fees for Preparing Fee Petition and Recreating Time

Similarly, plaintiffs' claim for fees on fees is not permitted. LRCiv 54.2(c)(2) does not allow for recovery of fees for preparing a fee application without authorization. Here plaintiffs have cited no law entitling them to such recovery. *Aviva USA Corp. v. Vazirani*, 2012 US LEXIS 89489 *6 (D. Ariz. June 28, 2012) (rejected request for fees on fees without establishing entitlement per LRCiv 54.2); *Croomes v. Stream Global Servs.-Az, Inc.*, 2012 U.S. Dist. LEXIS 52057, *10 (D. Ariz. Apr. 12, 2012) ("Defendant has not cited any legal authority in support of its claim for counsel's time spent in preparing Defendant's motion for fees and costs, and this Court did not state in its March 8, 2010 order (ECF 43) that Defendant was entitled to such fees. Accordingly, Defendant is not entitled to payment for the 2.5 hours of attorney time spent in preparing its motion for fees and costs."). Moreover, beyond seeking recompense for their fee petition plaintiffs go even further and request fees for the time spent recreating their fees which themselves are not recoverable.

Plaintiffs are seeking a total of $38,039.59 for preparing their fee petition and recreating time all of which is impermissible.

4. Entries Outside the Scope of the Court's Sanctions' Order

As asserted by Goodyear in prior briefing, plaintiffs are only entitled to recover fees resulting from Goodyear's allegedly sanctionable conduct. *Miller* 661 F.3d at 1029 ("the amount awarded had to compensate

the Millers for the damage actually caused. . ."); *see also Brown v. Baden* (*In re Yagman*), 796 F.2d 1165, 1185 (9th Cir. 1986) (reversed on other grounds) ("Recovery should never exceed those expenses and fees that were reasonably necessary to resist the offending action."); *see also Swofford v. Eslinger*, 671 F. Supp. 2d 1274, 1287 (M.D. Fla. 2009) (emphasis added) (citing *Amlong & Amlong, P.A. v. Denny's, Inc.*, 500 F.3d 1230, 1239 (11th Cir. 2007) ("Because this sanction is imposed pursuant to the Court's inherent authority, the amount of fees and costs awarded may not exceed the costs, expenses, and attorneys' fees reasonably incurred *because of the sanctionable conduct*."); *Chosin Few, Inc. v. Scott*, 209 F. Supp. 2d 593, 605 (W.D.N.C. 2002) ("In other words, those costs, expenses, and attorney's fees which are the proximate result of an attorney's misconduct are recoverable.").

Although the Order does not limit plaintiffs' recovery of fees and costs to those actually caused by the alleged misconduct (ECF 1073 at 64), a substantial portion of the fees sought by plaintiffs would have necessarily been incurred regardless of Goodyear's behavior. Clearly, as sanctions are intended to deter wrongful conduct and not be overly punitive, a court cannot condone sanctioning a party for time and expense necessarily required to prosecute plaintiffs' case. Plaintiffs chose to bring a product liability suit against multiple defendants, which, by necessity compelled plaintiffs to investigate and develop liability cases against the other defendants as well as medical/damage claims on behalf of each of the plaintiffs. Such work was integral to plaintiffs' case notwithstanding any action by Goodyear.[3] Accordingly,

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[3] Further, any suggestion that production of the heat rise test would have brought the case to an earlier resolution and obviated

the entries relating to Spartan, Gulfstream or medical/ damages are wholly distinct from the issues at hand and are thus not recoverable. Goodyear submits the following entries as representative examples of tasks outside of the scope of the Order which are not recoverable:

Date	Time-keeper	Task	Time	Rate	Total
1/24/07	David Kurtz	Prepare for and attend meeting with Dasse (counsel for intervenor Margaret Bogaert)	3.4	$500/ HR	$1700
2/13/07	David Kurtz	Prepare for Spartan deposition	4.0	$500/ HR	$2000
6/1/07	David Kurtz	Multiple telephone calls with Casey; telephone conference with Stuart regarding ethics issues; draft disclosure statement; review and revise discovery motion; email from Ott regarding discovery; telephone call to Abernathy, telephone call from Abernathy, telephone call from Salem	3.6	$500/ HR	$1800

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the fees plaintiffs are seeking is without evidentiary basis. *See Schalmo v. Goodyear* (which did not settle, but in fact proceeded through a jury verdict).

7/21/07	M O'Connor	Telephone conference with David Kurtz re to do's; review materials Abernathy & Medical Issues Green	4.0	$445/ HR	$1780 $45320

Finally, a number of plaintiffs' entries are for travel time, which is not recoverable under LRCiv 54(e)(2)(D) and thus beyond the scope of this Court's Order.

Entries which include this objection amount to $722,406.52 and should be disallowed or substantially reduced.

5. Incomplete and Vague Entries or Lack of Required Information

LRCiv 54.2(e)(2) requires that the "party seeking an award of fees must adequately describe the services rendered so that the reasonableness of the charge can be evaluated" and failure to do so may compel the court to reduce the award accordingly. This is supported by Ninth Circuit case law as well. *Neil v. Comm'r of Soc. Sec.*, 2012 U.S. App. LEXIS 23159, *3-4 (9th Cir. Nov. 9, 2012) (*citing Brandt v. Astrue*, 2009 U.S. Dist. LEXIS 50268 (D. Or. 2009) at *7 ("Where billing records are lacking in detail, a reviewing court may reduce the fee to a reasonable amount.").

Many of plaintiffs' entries are vague and ambiguous, or lack information required by LRCiv 54.2(e), thus making it difficult if not impossible for Goodyear to determine the validity of the entry. Examples of vague descriptions by Mr. Kurtz include "organize materials for expert meeting," "prepare for deposition," and general reference of teleconferences or correspondence without a description of the nature of such communications. Indeed, in *Schrum*, the court found time

entries similar to those here ("work on BSNF's Answer, work on motion to strike, draft discovery requests") to be in derogation of the mandatory requirements or LRCiv 54.2. *Schrum* at *26.

Furthermore, all telephone conferences must identify the participants and the reason for the telephone call, which plaintiffs fail to do. LRCiv 54.2(e)(2)(A).

Goodyear submits the following entries as representative examples of vague or incomplete time entries which are not recoverable:

Date	Timekeeper	Task	Time	Rate	Total
1/29/07	David Kurtz	Review document summary	2.0	$500/HR	$1000
2/1/07	David Kurtz	Telephone conference with client	.60	$500/HR	$300
5/10/07	David Kurtz	Attend depositions	8.9	$500/HR	$4450
5/17/07	David Kurtz	Prepare for and attend hearing	3.0	$500/HR	$1500
5/23/07	David Kurtz	Summarize exhibits	4.5	$500/HR	$2250

For a complete itemization of all vague time entries, see Joint Exhibit, Ex. A marked with the letter C. Entries which include this objection total $603,356.00 and should be disallowed or substantially reduced.

6. Duplicative and Excessive Time Entries and Multiple Time Keepers Performing the Same Task

Close inspection of plaintiffs' time records reveals the duplicative and excessive nature of plaintiffs' requested fees which Ninth Circuit law finds improper. "We hold that the district court acted within the bounds of its discretion in reducing the lodestar for unnecessary and duplicative work." *Chemical Bank v. City of Seattle* (*In re Washington Pub. Power Supply Sys. Sec. Litig.*), 19 F.3d 1291, 1298 (9th Cir. 1994); *see also Resolution Trust Corp. v. Titan Fin. Corp.*, 36 F.3d 891, 892 (9th Cir. 1994) ("We grant Sellan's motion, but deduct from the total $ 440 for unrelated matters and $ 11,215.75 for inappropriate, duplicative, or excessive entries in the time sheets"). There are numerous examples of duplicative time entries among the law firms representing plaintiffs in this matter. Many of those tasks could have been adequately accomplished by one law firm. For example, on April 13, 2010 both Mr. O'Connor and Mr. Kurtz each billed 5 hours for attending a pretrial conference, for a total fee of $4725. Similarly, on April 9, 2010 Mr. O'Connor billed 7.5 hours for preparing for and attending a pretrial conference. On the same date, Mr. Kurtz billed 8.5 hours with the same time description. The total billed on that date by both counsel was $7587.50. At $500/hour for Mr. Kurtz's time, the effect of duplicative and excessive time entries underscore the unreasonableness of plaintiffs' almost $3 million fee request.

Many of plaintiffs' time entries are also excessive. On February 11, 2011 Mr. Kurtz billed 8 hours simply to "Research re discovery fraud, sanctions and relief" for a total fee of $4000. On March 21, 2012 he billed

8.2 hours for a total fee of $4100 with a description of "Prepare for hearing; review filings." These amounts are clearly excessive and must be reduced.

Furthermore, in violation of the Court's June 15, 2012 Order limiting the parties' supplemental briefing to 22 pages (ECF 1029) and without leave of Court, plaintiffs filed a 34 page Statement of Facts (ECF 1047) along with their Supplemental Brief on June 22, 2012 (ECF 1076). Thus, the greater than twenty hours billed by Mr. Kurtz for drafting the Statement of Facts is clearly outside the scope of the Court's Order, as well as excessive, and should be deducted accordingly from any fee award.

An itemized list of all such excessive and duplicative entries is incorporated herein as Ex. A to the Joint Exhibit and marked by the letters E and H. Entries which include duplicative and/or excessive time total $599,329.50, and should be disallowed or substantially reduced.

7. Clerical or Administrative Tasks

Tasks which are clerical in nature are not recoverable. *See, Missouri v. Jenkins*, 491 U.S. 274, 288, n. 10 (1989) ("purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them"). *See also, Schrum v. Burlington N. Santa Fe Ry. Co.*, 2008 U.S. Dist. LEXIS 43184, *32 (D. Ariz. May 29, 2008). As explained by the court in *Schrum*, "[t]he rationale underlying this exclusion is that '[w]ork that is clerical in nature should be subsumed in a law firm's overhead.'" *Id.* (internal citations omitted); *see also Ctr. for Biological Diversity v. Salazar*, 2012 U.S. Dist. LEXIS 164203, 12-15 (D. Ariz. Nov. 15, 2012) (same).

Despite this prohibition, plaintiffs are attempting to recover both attorney and paralegal time for clerical work. This time must be denied on its face as the descriptions are clearly secretarial, administrative or clerical in nature. Goodyear submits the following entries as representative examples of clerical and/or secretarial tasks which are not recoverable:

Date	Time-keeper	Task	Time	Rate	Total
11/7/06	Kerry Chrisman	Make file folder for Judge Silver opinions regarding Daubert	.20	$165/HR	$33.00
1/3/07	Kerry Chrisman	Prepared list of due dates from scheduling order; office conference with D. Kurtz regarding same	.30	$165/HR	$49.50
1/23/07	Kerry Chrisman	Make notebooks for pneumatic tire Chrisman report	2.0	$165/HR	$350.00
4/6/07	Kerry Chrisman	Fill out transcript order form for hearing; e-file same	.30	$165/HR	$49.50

There are numerous similar entries listed by Ms. Chrisman that include tasks such as scanning documents, photocopying documents and bates labeling documents as well as several like entries by Mr. Kurtz. See Joint Exhibit, Ex. A where such entries are marked by the letter G. Entries with clerical time total $491,484, and should be completely disallowed.

C. Plaintiffs' Requested Costs are Not Recoverable

In addition to the unreasonable amount of fees sought by plaintiffs, plaintiffs also seek $291,479.89 in "costs." Plaintiffs apparently assume they are entitled to all costs and expenses incurred since November 2, 2006, notwithstanding the clear dictates of LRCiv 54.2. The costs submitted by plaintiffs include, for example, travel expenses, vague descriptions for photocopying and scanning documents, unrelated expert fees, mail and Federal Express costs, etc.

LRCiv 54.2(e)(3) states that in order to recover for any costs or expenses incurred, "Counsel should attach copies of applicable invoices, receipts and/or disbursement instruments. Failure to itemize and verify costs may result in their disallowance by the court." Plaintiffs have not attached any receipts or other forms of verification for any of the expenses they seek to recover. Furthermore, for the same reasons that certain fees are not recoverable, many costs are similarly not recoverable. For example, many of the entries are vague, duplicative or outside of the scope of the Court's Order and otherwise necessarily incurred to prosecute plaintiffs' suit. Accordingly, if the Court concludes that certain costs are recoverable, the amount should be drastically reduced.

The following entries as representative examples of costs submitted by plaintiffs are not recoverable:

Date	Expense	Amount
4/10/07	Research fees advanced – Westlaw	$2549.83
5/31/07	Photocopies	$2282.80
6/10/07	Travel Expenses Advanced – David L. Kurtz; airfare	$1648.70
4/5/10	Photocopy Expenses Advanced – Teris	$6228.09

See Joint Exhibit, Ex. A for Goodyear's annotations of plaintiffs' request for costs displaying which costs are recoverable and which are not. These entries are marked by the letter D. Plaintiffs seek $231,259.78 of unrecoverable costs which should be disallowed in their entirety.

CONCLUSION

Plaintiffs' fee application seeking almost $3 million is both overreaching and excessive. Contrary to law, it is neither reasonable nor in compliance with LRCiv54.2. Indeed, such a requested award undermines established precedent that sanctions should not be vindictive. Accordingly, plaintiffs' requested fees and costs must be denied or substantially reduced.

Plaintiffs' exorbitant request for $2,592,577.50 in attorneys' fees includes recreated time (of at least $146,550)[4], fees on fees ($38,039.59) and clerical work ($491,484) totaling $676,578.59, which must be

[4] As noted above this number is likely only half of the actual time for recreated fees. See Page 8 *supra*.

deducted off the top, as such entries are clearly not recoverable.

Plaintiffs' remaining requested fees are further objectionable either because they are outside the scope of the Court's Order, duplicative, excessive, vague and/or block billed and should thus be fully disallowed. While it is impossible to ascertain the total dollar amount of plaintiffs' objectionable time entries due to plaintiffs' improper block billing, the Court need keep in mind that 80% of the total fees billed is properly objectionable for one or more of these reasons and should be disallowed completely. (See JT Exhibit, Ex. C). Should the Court not disallow these fees in their entirety, it should, in the first instance, apply a 30% reduction for plaintiffs' improper block billing practices. Thereafter, the Court should make the further appropriate reductions for each of plaintiffs' additional objectionable entries: beyond the scope, duplicative, excessive or vague.

Given the time and difficulty in reviewing each of the thousands of time entries and deciphering which part of the block billed time should be discounted, the Court may alternatively consider addressing these objections through an additional percentage reduction. Since the law allows a 30% reduction for block billing, because it presumes the time included is properly billed although likely inflated, the reduction for these clearly improper time entries should be even greater. As such, an additional reduction of at least 30% for plaintiffs' entries which are vague, excessive, duplicative or beyond the scope, would be quite conservative.

Plaintiffs are seeking $291,479.89 in costs. However, as shown above and demonstrated in JT Exhibit,

Ex. B., $231,259.78 are not recoverable. Accordingly, any costs award should be no more than $60,220.11.

The fees and costs sought by plaintiffs are plainly excessive. Plaintiffs' Fee Application does not conform to the mandatory requirements of LRCiv 54.2 and plaintiffs attempt to recover for clearly non-allowable fees and costs. As such, Plaintiffs' Fee Application should be denied or significantly reduced.

Dated: January 10, 2013

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

[Filed: 01/29/13]

[Title omitted in printing.]

PLAINTIFFS' COMBINED REPLY IN SUPPORT OF THEIR APPLICATION FOR ATTORNEYS' FEES AND COSTS

Plaintiffs submit this combined reply in support of their application for attorneys' fees and costs [Doc. 1082] (the "Application") to address the objections raised in the separate responses of Goodyear and its former attorneys (collectively referred to herein as "Defendants"). [Doc. 1101-03]. As discussed in detail below, Defendants' objections have no merit, and this Court should award all the fees and costs documented in Plaintiffs' Application.

I. INTRODUCTION.

In their response to Plaintiffs' Application, Defendants continue to ignore the Court's reasoning and why the Court's decision to sanction Defendants is appropriate. When confronted with the sanction motion, Defendants attempted to deceive. When confronted with the Court's preliminary order, they doubled down on their deception. At the evidentiary hearing, they presented false testimony, apparently assuming there would be no further discovery (which the Court did allow, and which brought that additional fraudulent conduct to light). At no time have any of the Defendants displayed the slightest remorse or acknowledgement of wrongdoing. Consistent with this unrepentant attitude, Goodyear brazenly suggests

that the Court's decision to award all of Plaintiffs' fees and costs incurred after November 1, 2006, is "vindictive." [Doc. 1103 at 2, 4, 15].

As a result of the discovery of years of Defendants' misrepresentations and the fraudulent withholding of critical evidence, the sanctions which Plaintiffs sought included an award of fees for all the time their attorneys spent in this litigation, all litigation costs incurred throughout the litigation, unsealing of the record, and leave to file a supplemental pleading in this case to bring this matter to a quick conclusion with a jury trial based on the newly-discovered truth. In the exercise of its broad discretion, the Court declined to unseal the record, denied Plaintiffs leave to file a supplemental pleading,[1] and limited the monetary sanction to those fees and costs incurred "after Goodyear served its supplemental responses to Plaintiffs' First Request," concluding (with the benefit of the discovery of a long term history of fraudulent conduct) that was the date that Goodyear commenced its fraud and intent to evade its disclosure obligations. Rather than evidence vindictiveness, the Court's sanctions order was a measured, well-reasoned effort to address Defendants' overwhelming misconduct.

Defendants assert no argument whatsoever against the reasonableness of the billing rates used in

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[1] Ignoring this request and the Court's decision, Defendants suggest that Plaintiffs are seeking a post-settlement supplemental payment because "Plaintiffs don't want to reopen or try the case in lieu of the settlement they already accepted." [Doc. 1102 at 11]. However, Plaintiffs have already advised the Court they will affirm the settlement agreement and proceed as allowed against Defendants for fraud.

Plaintiffs' Application.[2] Instead, their arguments for reducing the amount of fees and costs which Plaintiffs request are limited to arguments that Plaintiffs' Application does not satisfy inapplicable procedural requirements and that certain categories of fees and costs are not recoverable. Significantly, Defendants do not suggest the slightest surprise regarding the total amount of fees and costs incurred during the seven years of this litigation, in which there have been more than 1,100 pleadings, tens of thousands of documents that were produced and analyzed, 33 witnesses deposed, and 1,087 exhibits listed for trial. Nor do Defendants dare to suggest that the total fees and costs Plaintiffs seek are excessive when compared to what they have incurred.[3] After all, no less than twelve attorneys have been working for Defendants (G.

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[2] Fennemore/Hancock merely asserts that Plaintiffs did not provide corroboration that $500 per hour was the prevailing rate in 2007. [Doc. 1102 at 11]. However, as explained in Plaintiffs' Application, the lodestar calculation is based on **current** prevailing rates, *see Missouri v. Jenkins*, 491 U.S. 274, 283 (1989), and Plaintiffs **do** provide substantial support for that rate. [Doc. 1082 at 3].

[3] Plaintiffs' counsel contacted Goodyear requesting copies of its bills from Roetzel & Andress and Fennemore Craig, so that Plaintiffs would be able to contrast for the Court the total hours incurred in representing Goodyear's interests in this matter with Plaintiffs' fees and costs. Goodyear refused. [*See Letters* (Exh. 1) attached hereto]. *See Henson v. Columbus Bank & Trust Co.*, 770 F.2d 1566, 1574-75 (11th Cir. 1985) (holding that the number of hours spent on a case by defense counsel may be relevant to a determination of the reasonable fees to be awarded to plaintiff); *Democratic Party v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004) (comparison of fees is useful guide in evaluating appropriateness of time claimed); *Stansby v. Southern Bell Tel. & Tel. Co.*, 77 F.R.D. 662, 663-64 (D.N.C. 1978) (time opposing counsel spent to prepare its case is probative, because they worked on the same issues).

Hancock, S. Freeman, S. O, J. Condo, L. Coulter, B. Musnuff, G. Rooney, M. Harrison, J. Molinar, J. Okun, G. Brandon, and B. McQuaid).[4]

The Application presents the Court with more than adequate information for the Court to determine, in its discretion, the reasonableness of the Plaintiffs' attorneys' fees and costs for the sanctions period. Defendants attempt to reargue several settled points, and generally engage in a series of hypertechnical and unfounded arguments in an attempt to minimize the impact of their own abhorrent behavior. Accordingly, Plaintiffs' requested fees and costs should be awarded in their entirety.

II. LEGAL ANALYSIS.

A. Defendants Improperly Attempt to Re-Argue Issues Which this Court Has Already Decided.

Defendants attempt to re-argue several issues which this Court already resolved in the Court's extensive and well-reasoned sanctions order [Doc. 1073]. These issues were correctly decided the first time. Defendants are simply unhappy with the Court's decision to impose sanctions on them, which decision Goodyear suggests is "vindictive." [Doc. 1103 at 2, 4, 15]. However, a response to a fee application is not the appropriate time or place to re-argue foundational issues which this Court has already decided.

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[4] *Donahue v. Donahue*, 105 Cal. Rptr. 3d 723, 733 (2010) (the number of lawyers the other side used is an indication of the effort required).

1. The Court's Order appropriately awards all fees and costs Plaintiffs incurred after November 1, 2006.

The proper scope of the sanctions to be imposed on Defendants has already been the subject of extensive briefing since the Court issued its preliminary order in February 12, 2012. [Doc. 980, 983, 992, 999, 1000, 1001, 1003, 1043-46, 1064-69] After carefully weighing both sides' arguments, this Court found that Defendants' misconduct "began almost immediately after the case was filed and continued throughout the entire litigation, including post-dismissal," [Doc. 1073 at 56], and concluded that "the most appropriate sanction is to award Plaintiffs *all* of the attorneys' fees and costs they incurred after Goodyear served its supplemental responses to Plaintiffs' First Request." [*Id.* at 51 (emphasis in original)].

Defendants now request that the Court reconsider its decision, claiming that $722,000 of fees and costs incurred during the relevant timeframe should be denied because – in Defendants' view – they were "not caused" by the conduct for which the Court issued sanctions. This argument is an improper motion for reconsideration which this Court should reject out of hand.

Furthermore, this argument should also be rejected because it is substantively erroneous. As this Court has correctly noted:

> In *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), the district court had relied on its inherent power and sanctioned NASCO a sum equal to "the entire amount of NASCO's litigation costs paid to its attorneys." *Id.* at

> 40. At the Supreme Court, Chambers challenged this amount by arguing "the fact that the entire amount of fees was awarded means that the District Court failed to tailor the sanction to the particular wrong." *Id.* at 57. The Supreme Court rejected this argument, finding "the frequency and severity of Chambers' abuses of the judicial system" meant "[i]t was within the court's discretion to vindicate itself and compensate NASCO by requiring Chambers to pay for all attorney's fees." *Id.* at 57. **This is a rejection of the position that only monetary harms incurred as a direct result of sanctionable conduct can be remedied.**

[Doc. 1973 at 54-55 (emphasis added)].

In this case, the Court made clear that "if these tests had been disclosed it would have been difficult if not impossible for Goodyear to claim the G159 was suitable for use on a motor home." [Doc. 970-1, at 13]. Thus, by withholding this critical evidence from the Court and counsel, Defendants converted this entire litigation into a meaningless charade, which required "an absurd expenditure of resources by Plaintiffs and the Court." [Doc. 1073 at 50]. This Court correctly noted that, "[i]n these circumstances, one could conclude practically all of Plaintiffs' fees and costs were due to misconduct (*i.e.*, the case would have been resolved in an easy and straightforward manner absent Goodyear's obstructionism),"[5] and that in light

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[5] In an effort to suggest otherwise, Goodyear asserts that *Schalmo* and *Woods* demonstrate that proper disclosure would not have impacted settlement. This is simply false. For example, Goodyear suggests that the concealed tests were ultimately disclosed in *Schalmo* and the case proceeded to trial. Goodyear

of the Defendants' "repeated egregious conduct . . . the Court must be free to fashion an appropriate remedy. The Court has done so." [*Id.* at 51, 65]. Thus, Defendants' causation argument has no merit.

Defendants similarly attempt to re-argue the Court's decision to award "*all* of the attorneys' fees and costs incurred" since November 1, 2006, based on an unsupported claim that there has not previously been a sanctions award as large as the amount requested in the Application. But even if it were true that the size of the Court's award is unprecedented, it is also true that the scope and egregiousness of Defendants' fraudulent conduct is also unprecedented in this District. When faced with this kind of exceptionally egregious misconduct, other courts have not hesitated to award **all** fees and costs, resulting in total awards that are as large as, or larger than, the amounts reflected in Plaintiffs' Application. *See, e.g., Chambers,* 501 U.S. at 40, 57 (affirming decision imposing sanctions of the entire amount of litigation costs incurred, in the amount of $996,644); *Qualcomm, Inc. v. Broadcom Corp.*, 2008 WL 66932 at *17 (S.D. Cal.

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does not explain why it went to trial and thus it may well have been plaintiff's decision. Regardless, it resulted in a $5.6 million verdict. More importantly, Goodyear fails to remind the Court of the **huge** difference between *Schalmo* and *Haeger*. Specifically, it was only in *Haeger* that Goodyear's expert and 30(b)(6) deponent admitted that the tire would foreseeably fail if it was exposed to prolonged temperatures in excess of 200°. These depositions were sealed and kept confidential, so that the jury, the plaintiffs and the court in *Schalmo* were never aware of the damning admissions which occurred in *Haeger*. Goodyear's reference to the *Woods* case is equally misleading. Again, the damning admissions of Goodyear's experts were concealed from the plaintiffs in *Woods*. Thus, reference to *Schalmo* and *Woods* in this context is classic Goodyear misdirection.

January 7, 2008) (awarding all attorneys' fees and costs incurred, in the amount of $8,568,633, for "monumental and intentional" discovery violations), *vacated in part on other grounds*, 2008 WL 638108 (S.D. Cal. March 5, 2008); *In re E.I. DuPont-Benlate Litigation*, 918 F. Supp. 1524, 1556-57 (M.D. Ga. 1995) (awarding all fees and costs, in the amount of $6,843,837, for discovery abuse which "made a mockery of the preparation for and conduct of that trial"), *rev'd on other grounds,* 99 F.3d 363 (11th Cir. 1996), *cert. denied*, 522 U.S. 906 (1997). Thus, Defendants' attempts to re-argue this Court's decision to award "all" fees and costs incurred since November 1, 2006, have no merit.

2. The Court has already determined that Mr. Hancock is responsible for 20% of Plaintiffs' fees and costs.

Fennemore Craig and Mr. Hancock further argue that any fees and costs allegedly unconnected to Mr. Hancock's misconduct, including all fees and costs prior to June of 2008, should not be allowed as against them. Again, as above, the Court has already taken into account Mr. Hancock's more limited role when it allocated only 20% of the overall award against Fennemore Craig and Mr. Hancock.

Mr. Hancock's misconduct is fully documented in the sanctions order. The Court found multiple intentional misrepresentations. The Court also found that "Mr. Hancock did not correct the record when he subsequently learned these other tests existed," and the litigation "continued for approximately twenty-two months" thereafter. [Doc. 1073 at 63]. Thus, the Court concluded, "while his culpability is reduced, it is not purged." [*Id.*]. The Court went on to hold: "Based on his relatively limited involvement, but in light of his

repeated misstatements and his failure to correct the record once he learned his representations were false, Mr. Hancock will be held responsible for twenty percent of those fees and costs." [*Id.* at 64]. Thus, the Court has already made a detailed review of Mr. Hancock's behavior and has decided to apportion only twenty percent of Plaintiffs' fees and costs against him. The argument raised by these parties in an attempt to further limit the sanctions against Mr. Hancock should be overruled.

3. The Court Has Already Ruled that Plaintiffs Fee Agreement Is Irrelevant to the Lodestar Analysis.

Defendants also attack Plaintiffs' Application on the ground that Plaintiffs did not provide a copy of their contingent fee agreement to the Court. However, the Court already addressed this issue, expressly stating that the amount of fees awarded in this case would be based on the lodestar method, not the Plaintiffs' contingent fee agreement:

> The Court recognizes that Plaintiffs might have a contingency agreement with their counsel. The amount of sanctions will be calculated pursuant to the lodestar method **and will not be limited to the amount paid by Plaintiffs as a percentage of the settlement**. *Cf. Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1048 (9th Cir. 2000) ("A district court may not rely on a contingency agreement to increase or decrease what it determines to be a reasonable attorney's fee.").

[Doc. 1073 at 51, n.23 (emphasis added)]. Accordingly, this Court has already ruled that Plaintiffs' fee

agreement is not relevant to the Court's determination of sanctions, and therefore Plaintiffs did not provide it. [Declaration of David Kurtz (Exh. 2) at ¶ 5].

Contrary to the Court's ruling, Fennemore Craig and Hancock nevertheless contend that the amount of fees awarded may not exceed the amount which Plaintiffs actually paid its counsel out of settlement proceeds. Otherwise, they contend, the award would go beyond compensating Plaintiffs, and would constitute punishment. Tellingly, they do not cite a single case in support of their assertion. Defendants are wrong.

The Supreme Court has explained that fee sanction awards for cases – like this one – of egregious misconduct have the dual purposes of both compensation and deterrence. *Chambers,* 501 U.S. at 45-46. Thus, (as this Court already determined) federal courts appropriately rely on the lodestar method, and are not limited to the amount of fees actually paid to counsel under a contingent fee agreement. Further Defendants do not deny that their wrongful conduct deprived Plaintiffs of the opportunity for a fair trial of their case on the merits. Thus, repayment of these expenses is, in fact, compensatory.

Moreover, if Goodyear's assertion were correct, then the Courts power to award sanctions in contingent fee cases would be almost completely eliminated. For example, if during pretrial proceedings a defendant in a contingent fee case violates the discovery rules or its counsel violates Rule 11, the court would be powerless to impose a fee sanction because, under Defendants' view, the plaintiff has not yet incurred any fee obligation, and will not unless and until the plaintiff succeeds in getting a judgment in its favor. *See Eriksen v. Dennett*, 2008 WL 54039 *1 (D. Utah Jan. 3, 2008)

("If this were the rule, in cases where plaintiff's counsel was retained on a contingent fee basis, defendants would be free to ignore discovery responsibilities without fear of monetary sanction."); *Mackler Productions, Inc. v. Turtle Bay Apparel Corp.*, 153 F. Supp. 2d 504, 510-11 (S.D.N.Y. 2001) (rejecting sanctioned attorney's argument that the plaintiff suffered no damages by his misconduct, and therefore was not entitled to compensatory sanctions, "because plaintiff had a contingency fee agreement with its attorney").

Furthermore, under Defendants' erroneous argument, the more effective a defendant's misconduct is, the greater the defendant's insulation from a fee sanction. For example, if the defendant engages in a pattern of discovery fraud that is so egregious that it causes the plaintiff to recover nothing in the final judgment, then under Defendants' view any award of fee sanctions would be improper because it would exceed the amount of fees the plaintiff was obligated to pay (zero).

Thus, Goodyear's interpretation would reward misconduct while retarding the inherent powers of the courts. Fortunately, that is not the law.

B. Defendants' Reliance on LRCiv 54.2 Is Misplaced.

Most of Defendants' objections to Plaintiffs' Application are based on alleged non-compliance with LRCiv 54.2. However, that rule – by its own terms – does not apply to attorneys fees and costs awarded as sanctions, as in this case: "This Local Rule does not apply . . . to claims for attorneys' fees or related expenses for violations of the Federal Rules of Civil Procedure or under 20 U.S.C. § 1927." LRCiv 54.2(a).

Here, the Court's award of fees and costs is expressly based on § 1927 and the Court's inherent power to impose sanctions, arising out of, among other things, a stream of willful violations of the Federal Rules of Civil Procedure.[6]

Although the Court's inherent power to impose sanctions is not specifically referenced in LRCiv 54.2(a), fee applications pursuant to such power are nevertheless exempt from the rule's normal requirements. The exemption for sanctions-based applications in LRCiv 54.2(a) is based on FRCP Rule 54(d)(2)(E), which similarly states: "Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927." *See Gobbo Farms & Orchards v. Poole Chemical Co.*, 81 F.3d 122, 123 (10th Cir. 1996) (Rule 54(d)(2)(E) makes awards "in the nature of a sanction" exempt from the "normal limitations on recovery of costs"; allowing recovery of "investigative expenses defendant incurred in preparing to defend against an unmeritorious claim"). Simply stated, attorney fee applications for sanctions awards have never been required to be documented as contemplated by the Local Rules for fee claims allowed by statute or contract.

Moreover, courts routinely construe the exemption in Rule 54(d)(2)(E) as applying to sanctions under inherent powers. *See, e.g., Plaskon v. Public Hosp. Dist. No. 1*, 2008 WL 249019 at *1 (holding that Rule

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[6] Defendants falsely assert that this Court clearly stated in its Sanctions Order that LRCiv 54.2 applies here. To the contrary, the order required Plaintiffs to file their application for fees and costs "as required by Local Rule." [Doc. 1073 at 66]. Because LRCiv 54.2 explicitly does not apply here, by its own terms, compliance with it was not required.

54(d)(2)(E) made a request for sanctions pursuant to the court's inherent authority exempt from the timing requirement of Rule 54(b)); *Royal Surplus Lines Ins. Co. v. Coachman Industries, Inc.*, 229 F.R.D. 695, 696 (M.D. Fla. 2005) (finding that an application for fees pursuant to court's inherent powers is exempted by Rule 54(d)(2)(E) because a fee application pursuant to inherent powers "is akin to a motion pursuant to Rule 11"). Defendants offer no authority to the contrary.

Accordingly, Defendants' objections based on alleged non-compliance with LRCiv 54.2 have no merit and must be rejected.

C. Defendants' Various Objections to Plaintiffs' Time Entries Should Be Rejected.

1. The time entries which Mr. Kurtz recreated based on the undisputed record are both reasonable and understated.

Plaintiff's counsel, David Kurtz, quite candidly brought to the Court's attention that he ceased keeping contemporaneous time records for this litigation for a brief period of time. Specifically, this period was from September of 2009 (six years after he was retained and after the first trial setting was vacated) through December 2010. Thus, in order to comply with the Court's order to identify fees and costs incurred subsequent to November 1, 2006, Mr. Kurtz reviewed the pleadings, correspondence and other documents contained in Plaintiffs' file. Based on that review, Mr. Kurtz very conservatively recreated just a small portion of the services actually rendered during that time period. Indeed, although this sixteen-month period includes all time necessary to fully prepare this case for trial, Mr. Kurtz's recreated time entries for this period total only 292 hours.

Defendants do not suggest that the scope of such services could be completed in just 292 hours. Their silence is a telling admission that the time billed for these services is completely reasonable. Moreover, none of the Defendants take issue with the Declarations attached to the Application, which set forth the underestimated nature of the time actually incurred and the countless hours of omitted services for which there was simply no record and thus no submittal.[7] Furthermore, during this timeframe, the Court was able to observe counsel's work at hearings, in filings, and in preparation for trial as an additional validation of the time incurred. *See Cruz v. Beto,* 453 F. Supp. 905, 907 (S.D. Tex. 1977), *aff'd* 603 F.2d 1178 (5th Cir.1979) (estimates of time suffice where Court had observed counsel's work and where Court had become "intimately familiar with this litigation during the past few years and the demands placed upon plaintiffs' counsel prior to trial stemming from defendants' tactical strategies").

Defendants nevertheless argue that all of the time entries which Mr. Kurtz recreated (totaling $146,550) should not be awarded to Plaintiffs, merely because they were recreated. Their argument has no merit.

As an initial matter, Defendants' argument ignores the reality that this litigation asserts tort causes of action in a contingent fee context. The recovery of

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[7] Plaintiffs' counsel have submitted detailed declarations reflecting the exercise of billing judgment. They fully support that the time documented significantly underestimates the time spent in representing the Plaintiffs' interests in this matter. Further, the bills submitted reflect the regular exercise of billing judgment and "no charge" entries for varied services, providing further support for the underestimated nature of the total time commitment in this almost seven-year ordeal.

attorneys' fees is generally not an issue in that context, and there is no requirement that contemporaneous time records be kept. *Cf. Frevach Land Co. v. Multnomah County, Dept of Envtl. Servs., Land Use Planning Div.*, 2001 WL 34039133 at *10 (D. Or. Dec. 18, 2001) (requiring contemporaneous time records "[i]f prevailing parties intend to seek attorney's fees") (cited by Defendants (Doc. 1102 at 2)). In *Mackler Productions, Inc. v. Turtle Bay Apparel Corp.*, 153 F. Supp. 2d 504 (S.D.N.Y. 2001), the court imposed a sanction of $45,000 against an attorney who caused a witness to present false evidence. Even though plaintiff's counsel did not have contemporaneous time records, the court held: "[T]he absence of such records is understandable as the case was litigated on a contingency fee basis." *Id.* at 509.

Here, it is fortuitous that Plaintiffs' counsel actually kept detailed time records for the vast majority of this case (which have been submitted to the Court). Those records were not kept for purposes of pursuit of our fee award. Rather, Mr. Kurtz kept track of his time consistent with his historical practices in order to monitor the efficiency of and productivity of contingency case file handling. [Declaration of David Kurtz (Exh. 2) at ¶¶ 3-4].

The cases cited by Defendants regarding discounting fees for the failure to comply with a specified duty to create contemporaneous billing records are inapplicable. As explained above, this was a contingent fee case in which a small portion of the time was carefully reconstructed, assuring it was underestimated so that no such objection could be expressed in good faith. The objections voiced by Defendants reflect no more than an anxious endeavor to find any reason to object to any particular time entry. For instance, when the Court

reviews the approximately $146,000 of recreated time, it will note that Defendants objected on 45 separate occasions to Plaintiffs' recreation of time expended where Plaintiffs exercised billing judgment and entered "no charge" for identified services. The objection to dozens of entries for which no charges were submitted is telling evidence that the objections were simply voiced for the purpose of objecting and are neither instructive nor designed to assist the Court in its analysis of the fees identified in compliance with the Court's order.

The robotic and thoughtless nature of the objections is evident throughout Defendants' joint exhibit. That is hardly helpful to the Court's analysis of this unexpected task. Thus, Defendants have largely engaged in non-specific "block objecting" and have essentially said to the Court "here are the general grounds for objecting, it is up to you to wade through the time entries to assess the applicability of these objections." The Court is not compelled to do the work which Defendants chose not to do. *See City of Prescott v. Town of Chino Valley,* 163 Ariz. 608, 623, 790 P.2d 263, 278 (Ariz. App. 1989), *aff'd in part, vacated in part,* 166 Ariz. 480, 803 P.2d 891 (Ariz. 1990) (parties involved in fee applications should "do more than dump a mound of paperwork on the Court with a here, you figure it out attitude.").

2. *Defendants' objections to "block billing" have no merit.*

Defendants object to over 60% ($1,611,044) of the fees Plaintiffs request on the ground that LRCiv 54.2 prohibits all block-billed time. As discussed above, LRCiv. 54.2 does not apply in this context, and therefore this objection has no merit.

But even if LRCiv. 54.2 did apply, Defendants' objection would still be unpersuasive. Significantly, Defendants do not claim that the services described in the time entries which they challenge as block-billed were not provided, that they were unnecessary or that the aggregated time is excessive. Instead, their objection is simply that the time was block billed.

Contrary to Defendants' argument, there is no per se requirement that the Court exclude any block-billed time. So long as the Court may assess the reasonableness of the fees being requested, a block-billing objection is not well taken. *See Parker v. Vulcan Materials Co. Long Term Disability Plan,* 2012 WL 843623 (C.D. Cal. Feb. 16, 2012) at *5 (overruling block billing objection because sufficient detail provided to allow Court to assess reasonableness); *Campbell v. National Passenger RR Corp,* 718 F. Supp. 2d 1093 (N.D. Cal. 2010) (no reduction for block billing, as entries identified "as block-billed are detailed enough for the Court to assess the reasonableness of the hours billed"); *Sunstone Behavioral Health, Inc. v. Alameda Cty. Medical Ctr.,* 646 F. Supp. 2d 1206, 1213-14 (E.D. Cal. 2009) (finding time entries reasonable despite block billing).

This is particularly true here because (as discussed above) the time records of Plaintiffs' counsel in this contingent fee litigation were not kept in anticipation of making a claim for attorneys' fees. The Local Rules did not require Plaintiffs to keep contemporaneous time records in a case where fees were not being pursued as a matter of statute or contract. Nevertheless Plaintiffs' time entries are accurately recorded and provide sufficient information for this Court to assess their reasonableness. Moreover, Plaintiffs' time records and fees have been reviewed by

three disinterested attorneys who expressed their opinions as to the propriety of the time incurred for the services described. Defendants offer nothing to contradict this evidence, and there is sufficient detail in the time entries for the Court to verify for itself that the services provided and the time charges were necessary and reasonable. Finally, because the very purpose of Mr. Kurtz's timekeeping was to assess efficiency and productivity, there would be no reason to ever inflate the total time spent on any given case, as Defendants imply.[8]

Having no obligation to keep time records at all, Plaintiffs should not be punished for not complying with an inapplicable local rule. More importantly, in this context, Defendants should not be allowed to evade the sanction which the Court has already determined to be appropriate for their misconduct.

3. Defendants' objections to alleged duplication are unfounded.

Next, Defendants object to time entries totaling $223,557 on the ground that the time entries reflect multiple timekeepers performing the same task. The declarations submitted by Plaintiffs' counsel describe the nature of services provided by each of the attorneys and their distinct roles in this case. Eighty percent of the legal work was done by one lawyer. The rest of the legal services were delegated in a

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[8] Goodyear wrongly suggest that all Mr. Kurtz's time after September 2011 was recreated, referring to a November 13, 2012 time entry which states: "Draft time records since January 1, 2011." However, the time records were maintained in handwriting on daily timesheets. Thus, the time entry refers to time expended to dictate the records so they could be added to Plaintiffs' Application. [Exh. 2 at ¶ 4].

thoughtful deployment to cost-effectively service the clients' needs. Accordingly, Defendants' objection of duplication has no merit.

Defendants' objection is merely general in nature and inadequate to be of benefit to the exercise of this Court's discretion. Having more than one attorney at a deposition or hearing, or drafting a motion is often necessary and prudent. Defendants make no attempt to explain why having more than one attorney work on a task was inappropriate, or why any specific time entry should be excluded from the Court's calculation of sanctions against Defendants.[9] This objection is particularly ironic, considering the small army of attorneys working for Defendants. Moreover, Defendants' general and vague objection is not adequate and provides no basis for a discretionary reduction of the fees. *See Sunstone*, 646 F. Supp. 2d at 1214 (*citing Moreno v. City of Sacramento*, 534 F. 3d 1106, 1113 (9th Cir. 2008) ("Findings of duplicative work should not become a shortcut for reducing an award without identifying just why the requested fee was excessive . . .")).

Defendants provide no meaningful assistance to the Court to understand the basis for their objection or to exercise its discretion. Instead, Defendants have simply placed an "E" adjacent to a number of time entries, apparently hoping that the Court will do what Defendants could not.

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[9] Defendants complain of duplication because Mr. O'Connor and Mr. Kurtz both prepared for pretrial conferences and the evidentiary hearing. However, both attorneys extensively participated in each activity, and preparation was necessary and appropriate.

Furthermore, if the Court were to take the time to examine the details, it would see that several of the time entries for which Defendants objected based on duplication actually did not involve multiple timekeepers performing the same task. For example, Defendants object to 1.8 hours Mr. Kurtz spent on September 21, 2009, for "receipt and review of transcript of proceedings re pretrial conference held on 9/11/2009" on the ground that it is duplicative. However, there is no corresponding charge for such services in the Jennings Strouss time records.

Moreover, the deductions demanded are clearly inappropriate. For example, Defendants object to the following time entries as duplicative:

> 4/23/2012: D. Kurtz - Multiple emails re deposition issues and production issues; Telephone conference with Molinar x 2 re Taylor deposition; telephone to Condo re missing documents from Fennemore Craig; multiple emails with O'Connor re discovery strategy issues; Review full file outline to list issues to address with Taylor during depositions; Pull study of tire development publications re design and testing; begin outline of three volumes of Olsen depositions to select question and answers for witness control during impeachment depositions - 9.1 - $4,550
>
> 4/23/12: M. O'Connor - Multiple calls with David Kurtz; Telecon John Egbert re status and pleadings - .5 - $222.50

In this example, Defendants invite the Court to write off the full 9.1 hours of Mr. Kurtz' time and the full .5 hours of Mr. O'Connor's time for duplication and

excessive billings when it is readily apparent that the communications between attorneys represents, at most, a half hour of the total time charged that day. Of course, such strategic consultations are appropriate in any event. Regardless, rather than asking the Court to deduct $222.50, Defendants invite the Court to write off $4,772.50, without justification. *They do the same thing every time they object based on claims of duplication or excessive fees*, managing to compile $599,329 of such objections [Doc. 1103, p. 13]. This is just more evidence of Defendants' bad faith, as the total time billed by Jennings, Strouss & Salmon, spanning five years, was only $502,496.

Defendants had the opportunity to express thoughtful objections. If they thought the time spent on a given task was excessive, they should specify the amount of time which was excessive and the reason why. They did neither. The same is true of Defendants' random claims of duplication. This kind of knee-jerk objection is of no value to the Court. If Defendants cannot explain "why" and "how much," the Court should not be tasked with speculating about values which Defendants chose not to provide.

4. Defendants' objection for alleged clerical work is unfounded.

Next, Defendants claim that the sanction against them should be reduced by $491,484 because the time entries were for mere clerical work. This objection is unfounded.

First, Defendants' characterization of some of the time entries as clerical work is plainly wrong. For example, in the time records of Jennings Strouss, Defendants characterize time entries for John Egbert on 3/30/12, 4/5/12 and 4/6/12 as clerical. Each of these

involves discussions of database searches. At this time, Goodyear was resisting Plaintiffs' discovery efforts by asserting that the searches of Goodyear's database that Plaintiffs had requested either were not possible within certain timeframes or were unduly burdensome. Brian LeBanc, who is referenced in these time entries, is an IT expert with whom Plaintiffs' counsel consulted to determine that Goodyear's assertions were unfounded.

Second, even if one of the tasks listed in a time entry were clerical in nature, that certainly does not justify deducting the entirety of all services listed in the time entry, as Defendants demand. But that is the kind of imprecise and improper analysis Defendants have provided the Court. The Court is not required to labor through the hundreds of pages of billing entries to assess the propriety of Defendants' claims of clerical service, when they chose to not analyze those time entries in good faith.

Finally, the Court should reject this objection completely because the sanction against Defendants requires them to pay *"all"* costs Plaintiffs' incurred after November 1, 2006. As discussed *infra* at § (C)(6), "costs" are not limited to "taxable costs," and a sanctions award may appropriately include such non-taxable expenses as paralegals and others performing clerical tasks in furtherance of the litigation. Such expenses were just as wasted by Defendants' gross misconduct as any others Plaintiffs incurred.

5. *Defendants' objection to fees related to the preparation of Plaintiffs' Application has no merit.*

Defendants object to fees and costs associated with the preparation of pleadings and exhibits relating to

the fee application. The Court has already ruled that Defendants are to pay for all fees and costs since November 1, 2006. Thus, this expenditure is part of that continuum of expense that should have been unnecessary. The idea that Defendants should evade responsibility for these fees is misplaced and would serve only as a reward to Defendants for prohibited actions. Moreover, fees incurred working on the fee application are compensable. *See Clark v. City of Los Angeles,* 803 F.2d 987, 992 (9th Cir. 1986) (fees compensable under 42 U.S.C. § 1988); *IMA North America, Inc. v. Marlyn Nutraceuticals, Inc.*, 2007 WL 3231976 (D. Ariz. Oct. 31, 2007) (time spent preparing fee application is compensable in sanctions context). Surely, the time needed to establish the amount of fees and costs should be compensable here because it is another direct by-product of the egregious bad faith conduct detailed in the sanctions order. After all, no one would be burdened with these preparatory endeavors, but for Defendants' fraudulent misconduct.

6. Defendants' objection to "non-taxable costs" has no merit.

The sanctions order holds that Defendants' sanction includes all of Plaintiffs' "costs." Defendants' argument that Plaintiffs' recovery is limited to only "taxable costs" should be overruled. *See Gobbo,* 81 F.3d at 123 (overruling objection to award of "investigative expenses" as sanction for unmeritorious claim).

This Court clearly has the power to impose the sanction of requiring Defendants to pay "all" the costs Plaintiffs incurred. *Chambers*, 501 U.S. at 40, 57 (sanction requiring payment of entire amount of litigation costs). Further, outside the sanctions setting, recovery by a party of non-taxable costs is allowed for any "out-of-pocket expenses incurred by an

attorney which would normally be charged to a fee paying client." *Chalmers v. City of Los Angeles,* 796 F.2d 1205, 1217 n. 7 (9th Cir. 1986); *accord Grove v. Wells Fargo Fin. Calif., Inc.*, 606 F.3d 577, 581 (9th Cir. 2010). This includes computerized research, *Trustees of the Construction Industry v. Redland Ins. Co.,* 460 F.3d 1253, 1258-59 (9th Cir. 2006); travel in connection with case, *Davis v. Mason County,* 927 F.2d 1473, 1488 (9th Cir. 1991) (superseded by statute on other grounds); photocopying and long distance phone calls, *Snell v. Reno Hilton Resort,* 930 F. Supp. 1428, 1434 (D. Nev. 1996); PACER charges, *Shakey's USA, Inc. v. Tutto's Pizza Corp.,* 2009 WL 3211027 at *6 (E.D. Cal. Sept. 30, 2009); delivery of documents, *Graves v. Arpaio,* 633 F. Supp. 2d 834, 851-52 (D. Ariz. 2009); and hearing transcripts, *Adidas Am. Inc. v. Payless Shoe Source, Inc.,* 2009 WL 302246, at *3 (D. Or. Feb. 9, 2009).

Defendants also object to the absence of invoices for the various cost expenditures identified in accord with the Court's order, knowing full well they represent actual expenditures. Provided with this Reply are the documents supporting the cost expended, in the amount of $254,092.56 on behalf of The Kurtz Law Firm. [Kurtz Dec. (Exh. 2) at ¶¶ 6-9 and Exh. 3]. Also provided are the documents supporting all the costs expended by Jennings, Strouss in the amount of $32,466.60.[10] [Declaration of John J. Egbert attached hereto as Exh. 4].

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[10] The only exception to documented costs are those associated with copying expenses incurred by both firms. Like all firms, The Kurtz Law Firm and Jennings, Strouss & Salmon record the number of pages of documents copied during the course of litigation in order to be recompensed by clients for those charges. Both firms charge 20¢ per page, as is customary in the Phoenix

The Court properly awarded Plaintiffs all of their costs incurred during the sanctions period. These costs have been fully documented. The objections to the costs should be overruled.

III. CONCLUSION

Defendants' conduct "stemmed from a deliberate corporate strategy adopted by Goodyear to prevent disclosure" of critical test data. (Doc. 970-1 at 15). The strategy involved "clear and repetitive" deceptive acts, including during the evidentiary hearing. The conduct defeated any notion of a fair trial or settlement based on the actual facts. The conduct defiled the court system and defeated its purpose. The Court's sanctions award is appropriately crafted to address unprecedented misconduct for which there is no excuse.

Plaintiffs have filed documentation that is more than sufficient to allow the Court to find that the documented fees and costs are reasonable, and enter its award in response to the egregious conduct of Goodyear and its counsel. Defendants' objections are not well taken and should be overruled, and the Application granted.

RESPECTFULLY SUBMITTED this 29th day of January, 2013.

THE KURTZ LAW FIRM

By: */s/ David L. Kurtz*

David L. Kurtz
7420 East Pinnacle Peak Road, Suite 128

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metropolitan market for similar services. The 20¢ copy charge is designed to defray expenses associated with the reproduction process. Other than "copy counts," neither firm maintains any separate record which would "describe" copies.

Scottsdale, AZ 85255
Michael J. O'Connor
John J. Egbert
JENNINGS, STROUSS & SALMON, P.L.C.
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

[Filed: 06/26/13]

No. CV-05-02046-PHX-ROS

LEROY HAEGER, *et al.*,

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER CO., *et al.*,

Defendants.

ORDER

On November 8, 2012, the Court sanctioned Graeme Hancock, Basil Musnuff, and Goodyear Tire and Rubber Co. ("Goodyear") based on repeated misconduct during discovery. The amount of sanctions was set as the "fees and costs incurred after Goodyear served its supplemental responses to Plaintiffs' First Request" for Production of Documents in September 2006. (Doc. 1073 at 64). Because the fees and costs were being awarded as a sanction, Local Rule 54.2 regarding attorneys' fees requests did not automatically apply. Out of an abundance of caution, however, and to give Mr. Hancock, Mr. Musnuff, and Goodyear an opportunity to object, the Court directed Plaintiffs to submit the documentation contemplated by Local Rule 54.2. Having reviewed that documentation, the Court issues the following order.

I. Background

The Court will not recount in detail the misconduct that served as the basis for sanctioning Mr. Hancock, Mr. Musnuff, and Goodyear. In short, sanctions were necessary because "Goodyear and its attorneys adopted a strategy . . . to resist all legitimate discovery, withhold *obviously* responsive documents, allow Plaintiffs and their experts to operate under erroneous facts, disclose small subsets of documents as late as possible" and otherwise attempt to frustrate the administration of justice. (Doc. 1073 at 65). The latest briefs from Goodyear and its attorneys contain a number of arguments that are, in effect, requests for the Court to reconsider its prior findings. There is no basis to revisit most of those arguments. The only argument worthy of additional discussion involves the alleged absence of a direct causal relationship between the misconduct and the fees and costs awarded by the Court.

Given the breadth of the misconduct in this case, it would be exceptionally difficult to link each instance of misconduct with the harm that misconduct caused. When attorneys make repeated misrepresentations in court, a 30(b)(6) witness repeatedly makes misrepresentations during his deposition, and expert witnesses are knowingly misled, a court must have some ability to provide relief. The Court previously concluded it would be appropriate to shift all the fees and costs incurred after it became clear that Goodyear and its attorneys were not acting in good faith. The Court recognizes, however, that Ninth Circuit authority might be read as limiting an award of sanctions to the harm *directly* caused by the misconduct. *Miller v. City of Los Angeles*, 661 F.3d 1024 (9th Cir. 2011). Therefore, to prevent the need for

future proceedings, the award of fees and costs will include an alternative amount of the fees and costs incurred as a direct result of sanctionable conduct.

Regardless of whether the Court awards *all* the fees and costs after September 2006 or only a much smaller subset, it now appears that an inordinately complicated accounting will be required. Therefore, the parties will be instructed to meet and confer in an attempt to agree regarding the appropriate size of the Court's award. If they are unable to agree, the Court will appoint a special master to conduct the accounting. The Court offers the following in hopes of guiding the parties' discussions.

II. Determining the Amount of Attorneys' Fees

The Court previously indicated it would utilize the lodestar method for calculating the amount of fees. (Doc. 1073 at 51 n.23). That method consists of "multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996) (quotation omitted). Once that calculation is made, the Court "may then adjust the figure upward or downward taking into consideration twelve reasonableness factors." *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1033 n.11 (9th Cir. 2012) (quotation omitted).

A. Reasonable Hourly Rates

Plaintiffs seek the following hourly rates:

Individual	Hourly Rate
David L. Kurtz (attorney)	$500
Kerry Chrisman (paralegal)	$165
Michael O'Connor (attorney)	$445
John J. Egbert (attorney)	$425
Paul G. Johnson (attorney)	$365
Garrett Olexa (attorney)	$345
Peter Donovan (attorney)	$180
Michele Maser (paralegal)	$195
Mary Muchmore Hogue (paralegal)	$165
James Abernethy (attorney)	$400

Goodyear and its attorneys do not object to any of these hourly rates as unreasonable. Based on the evidence submitted by Plaintiffs, the Court finds these fees reflect the prevailing hourly rate in Phoenix for lawyers of reasonably comparable skill, experience, and reputation working on matters of this type. Therefore, any calculation of the lodestar will be based on these hourly rates.[1]

B. Hours Reasonably Expended

According to the time records submitted by Plaintiffs' counsel, lead counsel David Kurtz spent approximately 3,700 hours on this case during the

[1] Goodyear and its attorneys objected that these rates might not have been the prevailing rate at the time the services were performed. But this objection is foreclosed by Supreme Court authority. *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (allowing for application of current rates).

relevant time while a paralegal at his firm spent approximately 1,000 hours. The attorneys and paralegals at Jennings, Strouss & Salmon, P.L.C. spent approximately 1,200 hours. And attorney James Abernethy spent approximately 120 hours. Goodyear and its attorneys object to these figures, claiming the absolute maximum the Court could find reasonable is approximately 800 hours by Mr. Kurtz and his paralegal, a little over 500 hours from all the staff at Jennings, Strouss & Salmon, and no hours from Mr. Abernethy.

The difference between the parties' calculations for the reasonable amount of time spent on this litigation is approximately 4,600 hours. Based on the Court's familiarity with the case, and its participation throughout the litigation, the hours submitted by Plaintiffs appear more reasonable than those proposed by Goodyear and its attorneys. But the Court is not yet prepared to definitively resolve the reasonable number of hours. Instead, the parties will be instructed to attempt to reach settlement on two figures. First, the reasonable number of hours incurred after September 2006. Second, the reasonable number of hours directly attributable to the sanctionable conduct identified in the sanctions order. If the parties are able to reach agreement on these two figures, the Court will adopt the parties' agreement, awarding the higher figure but also deeming the lower figure an appropriate alternative in the event the sanctions must be so limited.

If the parties are unable to reach agreement on the number of hours reasonably expended, the appointment of a special master appears appropriate. Fed. R. Civ. P. 53. That special master would be tasked with preparing a report on the appropriate lodestar

regarding attorneys' fees. *See, e.g., Agostino v. Quest Diagnostics, Inc.*, 2012 WL 2344865 (D.N.J. June 20, 2012) (appointing special master to prepare report on attorneys' fees dispute). At present, the Court is inclined to require the parties split the cost of a special master equally but the special master would be instructed to submit a recommendation regarding the final allocation of the costs associated with his or her service.

Pursuant to Federal Rule of Civil Procedure 53, the Court can appoint a master only after giving "the parties notice and an opportunity to be heard." Fed. R. Civ. P. 53(b)(1). Therefore, if the parties cannot reach an agreement on the amount of attorneys' fees, the parties will be ordered to file a joint statement setting forth their position on the following issues: whether appointment of a special master is warranted; how the costs of the special master should be allocated; and the names of three agreed upon individuals qualified to serve. Each interested party will be allowed three pages.

III. Determining Appropriate Costs'

As with the amount of attorneys' fees, the parties also present very different views regarding the appropriate amount of costs to award. Goodyear and its attorneys argue that the Court should award only those costs that qualify as "taxable" under 28 U.S.C. § 1920. It is unclear why Goodyear and its attorneys believe the award of costs must be so limited. And the award cannot be so limited.

The Ninth Circuit has "repeatedly . . . allowed prevailing plaintiffs to recover nontaxable costs where statutes authorize attorney's fees awards to prevailing

parties."[2] *Grove v. Wells Fargo Financial California, Inc.*, 606 F.3d 577, 580 (9th Cir. 2010). In the specific context of sanctions, the Supreme Court has held a court may award "the entire amount of . . . litigation costs paid to . . . attorneys." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 40 (1991). Therefore, there is no bar to awarding Plaintiffs their taxable and non-taxable costs.

Again, the parties will be instructed to attempt to agree regarding costs. As with the attorneys' fees, there should be an attempt to agree on the costs incurred after September 2006 as well as the costs incurred as a result of the sanctionable conduct. If they cannot agree, the special master will be tasked with conducting an accounting.[3]

IV. Motions for Clarification

There are two pending requests for clarification. First, Goodyear seeks clarification that the additional information submitted by Spartan Motors, Inc. (Doc. 1083) will not be addressed at this time because of the pending appeal. The additional evidence is a motion for reconsideration regarding the portion of the sanctions order addressed to Spartan's request for sanctions against Goodyear. Because the sanctions order regarding Goodyear is currently on appeal, the Court will not address Spartan's additional evidence at this time.

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[2] The prevailing practice in Phoenix is to bill costs separate from an attorneys' hourly rate. *Agster v. Maricopa County*, 486 F. Supp. 2d 1005, 1022 (D. Ariz. 2007).

[3] David Kurtz admits he was unable to locate supporting documents for eleven cost items, totaling $4,880.73 (Doc. 1112-1 at 8-9). Those costs will not be awarded.

The second request for clarification comes from Plaintiffs. In the sanctions order, the Court apportioned twenty percent of the fees and costs to Mr. Hancock and the remaining eighty percent to Mr. Musnuff and Goodyear. (Doc. 1073 at 64). Plaintiffs now seek clarification on whether the Court intended to impose joint and several liability on Mr. Hancock, Mr. Musnuff, and Goodyear. Goodyear and its attorneys object to the Court addressing this issue given that Goodyear's appeal is pending. Out of an abundance of caution, the Court will defer ruling on this issue until the Ninth Circuit issues the mandate.

V. Attorney Client Privilege

During the sanctions proceedings, Goodyear and its attorneys attempted to justify their behavior by disclosing certain information that might have been subject to the attorney-client privilege. Given that context, the disclosures will be considered a waiver of the privilege. *See Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992) ("The privilege which protects attorney-client communications may not be used both as a sword and a shield.").

Accordingly,

IT IS ORDERED the Motion for Attorney Fees and Costs (Doc. 1082) is GRANTED IN PART as set forth above.

IT IS FURTHER ORDERED no later than July 19, 2013 the interested parties shall meet and confer regarding the appropriate amount of attorneys' fees and costs. If they are able to reach agreement, no later than July 22, 2013 the parties shall file a joint statement identifying the appropriate amount of attorneys' fees and costs incurred after September

2006 as well as the attorneys' fees and costs incurred as a direct result of the sanctionable conduct.

IT IS FURTHER ORDERED if the parties cannot agree on the appropriate amount of attorneys' fees and costs, no later than July 26, 2013 they shall file a joint statement of no more than three pages per party with each party setting forth: whether appointment of a special master is warranted and how the costs of the special master should be allocated. The parties should also jointly identify three individuals qualified to serve.

IT IS FURTHER ORDERED the Motion for Clarification (Doc. 1089) is GRANTED.

IT IS FURTHER ORDERED the Motion for Clarification (Doc. 1114) is DENIED WITHOUT PREJUDICE. Plaintiffs should renew their request, if appropriate, within ten days of the mandate being issued.

DATED this 26th day of June, 2013.

/s/ Roslyn O. Silver
Roslyn O. Silver
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

[Filed: 08/26/13]

No. CV-05-2046-PHX-ROS

LEROY HAEGER, *et al.*

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER COMPANY, *et al.*,

Defendants.

JUDGMENT ON ATTORNEYS FEES

IT IS ORDERED AND ADJUDGED Pursuant to the Order filed August 26, 2013, judgment is entered in favor of Plaintiffs and against Graeme Hancock in the amount of $548,240.23 and against Basil J. Musnuff and the Goodyear Tire and Rubber Company in the amount of $2,192,960.93.

JUDGMENT ENTERED THIS 26th day August, 2013.

BRIAN D. KARTH
District Court Executive/Clerk

s/ L. Dixon
Deputy Clerk